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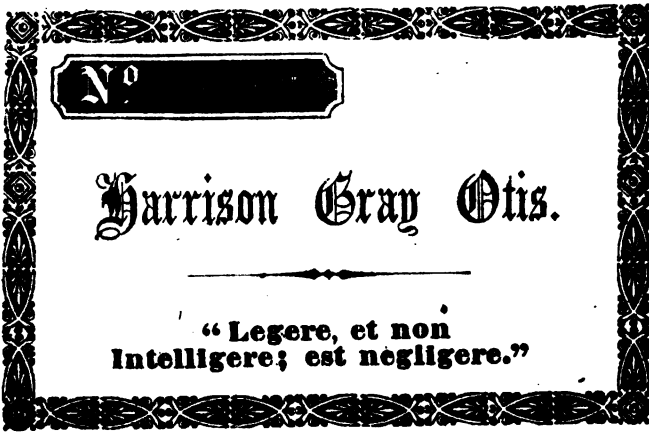
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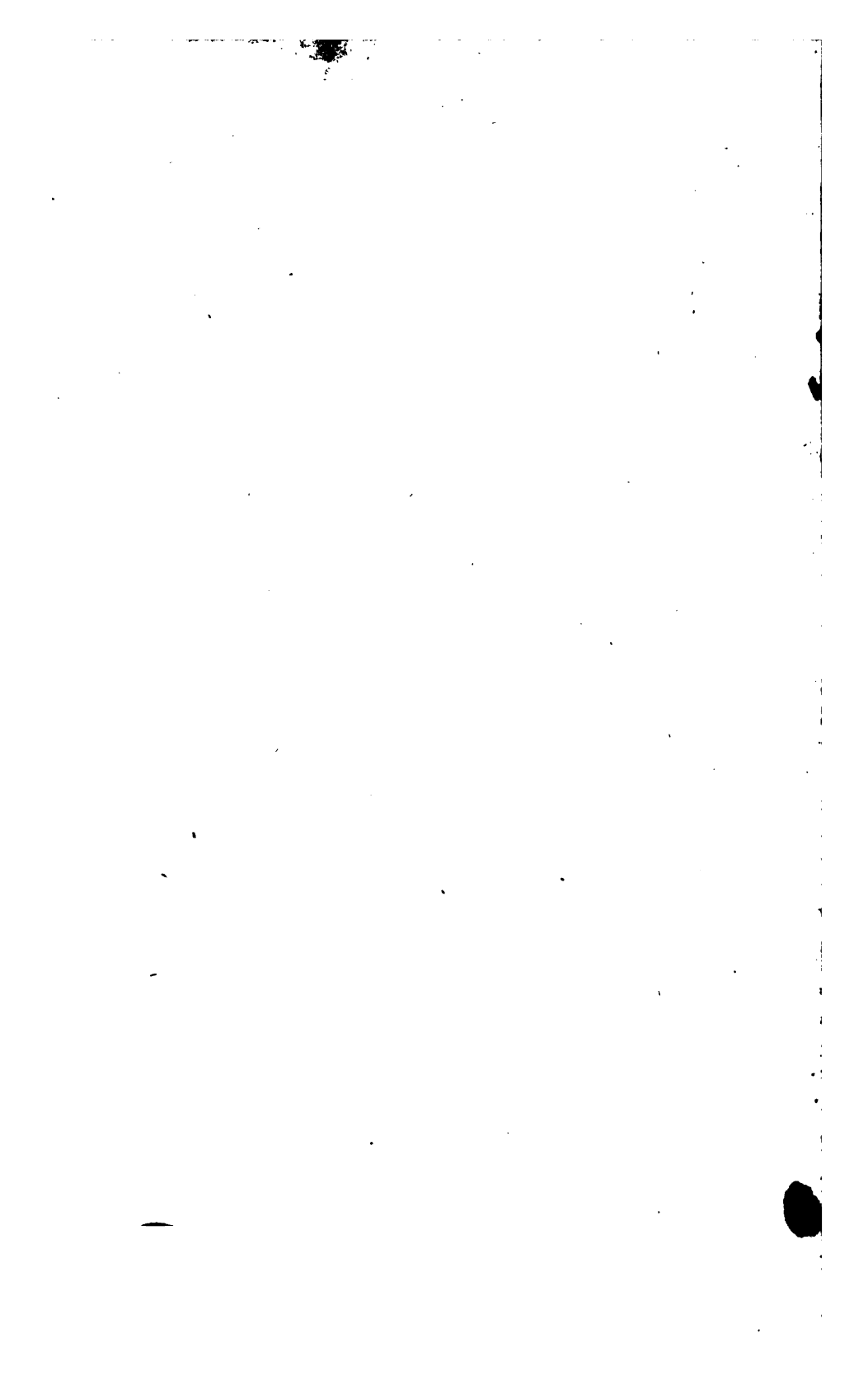
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SPEECHES

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OF

JOHN PHILPOT CURRAN, ESQ.

WITH A BRIEF SKETCH

OF THE

HISTORY OF IRELAND;

AND

A BIOGRAPHICAL ACCOUNT OF

MR. CURRAN.

IN TWO VOLUMES—VOL. II.

NEW-YORK:

Printed and published by L. Riley.

1811.

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, That on the twentieth day of November, in the thirty-sixth year of the Independence of the United States of America, ISAAC RILEY, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following, to wit:

“Speeches of John Philpot Curran, Esq. With a Brief Sketch of the History of Ireland, and a Biographical Account of Mr. Curran. In two volumes. VOL. II.”

IN CONFORMITY to the act of the Congress of the United States, entitled, “An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned;” and also to an act, entitled, “An act, supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

CHARLES CLINTON,
Clerk of the District of New-York.

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THE TRIAL

OF OLIVER BOND FOR HIGH TREASON.

OYER AND TERMINER.

AT a court of oyer and terminer and general gaol delivery, consisting of the Right Hon. Lord Carleton, Hon. Mr. Justice Chamberlaine, Hon. Mr. Baron George, Hon. Mr. Justice Crookshank, and the Hon. Mr. Justice Day, held for the county of the city of Dublin, Oliver Bond, of Dublin, merchant, was arraigned and tried on an indictment, of which the following is an abstract:

First count—That Oliver Bond, not regarding his allegiance, falsely, wickedly, and traitorously did compass and imagine the king, off and from his royal state, crown and government of this his kingdom of Ireland, to depose and deprive, and the said king to kill, put to death and murder.

Overt acts—That the said Bond, in order to effect the said evil purpose, did conspire together, and meet with divers other false traitors, &c. 2. That he did with other traitors meet and make resolutions for the purpose of procuring arms, ammunition, &c. 3. That he did meet and conspire with others to overturn the government, &c. 4. That he did with divers others meet and assemble together to raise rebellion, and to procure arms to assist in said rebellion. 5. That he did persuade and cause one Thomas Reynolds to become a colonel in the county of Kildare, for the purpose of aiding in said rebellion. 6. That he administered the United Irishmen's oath to the said Thomas Reynolds, &c.

Second count—That the said Oliver Bond, with intent to

subvert the government and constitution, unlawfully and traitorously was adhering to, aiding and comforting the persons exercising the powers of government in France, and the men of France under the government of the said persons, then being enemies of the king.

The same overt acts were laid in support of this count as of the first.

Mr. Attorney-General, on the part of the crown, opened the case to the court and jury. He observed, that he never, in any moment of his life, had risen under impressions of more solemn feeling, or on an occasion the importance of which claimed more exertion on his part, or attention from the public. "On the very night (said he) that Lord Moira, with a degree of captivating eloquence, for which that nobleman is distinguished, was arguing with the lords of Ireland, where he had been so long a stranger, and respecting which he had obtained very bad intelligence indeed, for I cannot suppose his lordship guilty of deliberate misstatement—on that very night when he was endeavouring to show that there were no traitors in Ireland, that the innocent were accused, the accusers were guilty; conspirators, in the same capital, were, by a formal resolution, giving the lie to what this able, eloquent, and popular character was urging in parliament." He then proceeded to state what he had been instructed to say would turn out in evidence, and concluded with some remarks as to the manner in which the treasons of which the prisoner was charged had originated out of the French revolution, the evils and destructive tendency of which were incalculable.

EVIDENCE ON THE PART OF THE CROWN.

Thomas Reynolds,* being sworn, said, that in February,

* As the trials of W. Byrne and O. Bond were so very much alike, we have omitted the former, who was condemned and immediately executed. The evidence of the arch-traitor Reynolds is nearly similar in both the trials;

1797, he was made a United Irishman, by Oliver Bond, at the Brazen-Head in Bridge-street, Dublin. That he was well acquainted with Bond, and has conversed with him on political affairs frequently—that the object of the society called United Irishmen, was to overturn the existing constitution, and to establish in its stead a republican form of government—that the society was spread over the whole kingdom—that it was divided into provincial, county and baronial assemblies, which last, when too large, were again divided into districts—that the districts and baronies sent representatives to the county, which sent delegates to the provincial meetings—that Lord Edward Fitzgerald wished this deponent to become a delegate for the county of Kildare—that Bond renewed the request of Lord Edward, and also pressed this deponent to become a colonel for the barony of Kiltrea. Bond said, that every man who wished well to the cause ought to step forward as a delegate. This deponent attended a meeting at the 19-mile house, where he and every other member took an oath of secrecy—there was then an election of delegates to serve three months. Michael Reynolds, who was present at that meeting, said there was to be a meeting on the Monday following at Bond's, and told this deponent to ask for M'Cann, or Ivers, from Carlow, and he would be admitted; which meeting this deponent could not attend, owing to its being so far off. When he went to Dublin, M'Cann refused to tell him when the next meeting would be at Bond's, as he had not his returns with him, and accordingly he went to the country to procure them.

This deponent dined at Sir Duke Giffard's at Castle Jordan, in company with Mr. Cope, Captain Fitzgerald, Lord Wycombe, Mr. Maxwell and Sir Duke. There was some

we only learn in Byrne's, "that if he, Reynolds, could come on terms, he would furnish government with proofs of the conspiracy, and disclose the whole of the transaction. Mr. Cope said, that such a man should be gratified to his wish, if a thousand a year and a seat in parliament would content him!

conversation on the current politics of the times, and the affairs of the *United Irishmen*. The next day, this deponent returned to Dublin in a chaise with Mr. Cope, who, resuming the conversation of the preceding day, lamented very much the injurious tendency of the *United Irishmen*. This deponent told Mr. Cope that he had a friend who was of that fraternity, whom he would endeavour to persuade to give information to government, to atone for the crime he had committed, by his having joined them; to which Mr. Cope replied, that such a man ought to be considered the Saviour of his country. This deponent said, if his friend did come forward, it would be merely to satisfy his own mind; that he would call on Mr. Cope in a day or two, and in the interval, see his friend and speak with him. Mr. Cope said, such a man ought to be gratified with a thousand or fifteen hundred a year, and a seat in parliament. This deponent said he mistook him; his friend only wanted to be reimbursed his expenses, as it was necessary that he should leave the kingdom for a little time, and to stipulate that he was not to give evidence against *United Irishmen*, and the channel whence the information came was to be kept secret. Mr. Cope bid this deponent mention any sum and he would agree to it. This deponent said, his friend's expenses might amount to 500 guineas, and desired he might be at liberty to draw on him for that sum. Mr. Cope agreed to every thing, and this deponent then gave all the information in his power, and told of the meeting at Bond's on the 12th of March, &c. On the Saturday previous to the meeting, this deponent saw M'Cann at Bond's house, and showed him his returns, whereupon M'Cann told him the meeting was to be at Bond's on the Monday following, and to ask for M'Cann, or Ivers, of Carlow, and he would be admitted. This deponent went immediately, and informed Mr. Cope of all that had passed, which he promised to keep secret. This deponent did not attend the meeting.

On Sunday, this deponent called at Leinster House, and saw Lord Edward Fitzgerald, who showed him a paper from

Captain Saurin, of the lawyers' corps, of orders to that corps, stating, in case of any tumult to repair to Smithfield, and be furnished with ball-cartridges, and, in a note, to "keep their orders secret." After Lord Edward read the paper, he said he thought that government intended to arrest him, and that he would go off to France, to hasten an invasion of this country, and to send frigates, as he had interest with one of the French ministers; said he did not approve of a general invasion at first, and remarked, that if any accident happened to overturn it, it would totally destroy the business both here and in France. He said he thought Wexford an unprotected place, and would answer for a rallying point against the country, and if it were committed to him, he would engage it would answer. After this, Lord Edward paced the room a while, and then said, "It is impossible; government cannot be informed, no, it is impossible—government can never be able to find out where the provincial meetings meet! This deponent replied "it was impossible!!!"

This deponent saw Lord Edward several times after the arrest of Bond; at one of the interviews, he gave this deponent a paper, an address to the United Irishmen of Kildare county; he said he had some money in his hands as treasurer of the Barony of Ophaly, which he would pay over to this deponent, as treasurer of the county. This deponent carried the address down to the county meeting, it was read, and then, at the request of a member, burnt—the substance of the paper was to fill up the vacancies made by the arrest of Bond, &c. as soon as possible, for very soon they should be called upon, they might rely upon his being in his place on a short day, and desired them not to think any thing of what had happened. Some time after, Lady Fitzgerald gave this deponent 13*l*. to be laid out in defence of the prisoners to be tried at Naas. This deponent was told by a delegate from a baronial committee, that his practices were known, and also heard, that a delegate from Carberry committee said, that

Michael Reynolds had brought down a charge against him for the information which they said he had given about the meeting in Oliver Bond's house. He was afterwards summoned to meet at Bell's house in Kildare; *he there gave the most solemn assurances that he had not given any information!* This deponent was preparing to leave the country, but a party of the Cork militia came to his house, put him under arrest, staid seven or eight days, drank his wine, and broke things. This deponent afterwards set out for Dublin, but changing his mind on the way, he returned to his house, and was there arrested by the Slane cavalry, who brought him up to Dublin. On his arrival he was censured by both parties; by one, for being a United Irishman, and the other, for giving information: he therefore determined to lay his whole conduct before the court and his country at large. About four or five days before the meeting at Bond's, this deponent drew upon Mr. Cope for 300 guineas, and some time after, for 200: it was his determination to leave the kingdom; his losses amounted to about 630*l.* After Bond's arrest, he went down to attend the county meeting, that he might not be suspected.

This deponent directed a servant to administer a dose of tartar emetic to his mother-in-law, and Captain Withrington (her son) said he had poisoned her. She was a large corpse, and on the fourth day, there was a pitched sheet got to wrap her corpse in. This deponent was indebted to Mrs. Cahil, who was old and blind, in the sum of 75*l.* he gave her his bond for 50*l.* and his note for 25*l.* but, *by mistake*, the bond he gave her was not perfected; the money has been since paid, except 10*l.* which he had tendered. This deponent took an oath when made a United Irishman, and when he was made a colonel; he also took the oath of allegiance, and had taken an oath in this court, which he consi-

dered as absolving him from all oaths he had taken as a United Irishman.*

Bellingham Swan, a magistrate, deposed, that having been apprized of the meeting to be held at Bond's on the 12th of March last, he took with him fifteen serjeants of different regiments, dressed in coloured clothes, and by means of the pass word, "where is M'Cann, or Ivers, of Carlow," was admitted; he apprehended Bond in the warehouse; he then darted up into the ropm, where he found M'Cann, Byrne, and some others, all of whom he arrested, and seized all the papers he could find. Bond made not the least resistance, neither did he appear to be at all alarmed at his apprehension.

Mr. Cope confirmed the testimony of Reynolds as to the conversation and intercourse between them.

Mr. CURRAN. My lords, and gentlemen of the jury, I am counsel for the prisoner at the bar—it is my *duty* to lay his case before you. It is a *duty* that at any time would be a painful one to me, but at present peculiarly so; having, in the course of this long trial, experienced great fatigue both of mind and body, a fatigue I have felt in common with the learned judges who preside on the bench, and with my brethren of the bar. I feel, as an advocate for my client, the awful duty of an obligation that has devolved upon me. I do not mean, gentlemen, to dilate on my own personal fatigues, for I am not in the habit of considering my personal ill state of health, or the anxiety of my mind, in discharging my duty to clients in such awful situations, as in the present momentous crisis; I have not been in the habit, gentlemen of the jury, to expatiate to you on personal

* "An approver comes forward; the plan which he discloses may be true, or it may be of his own formation—but, if convicted, in the smallest instance, of wilful and corrupt perjury, I do not see how any man can say that it does not create a doubt of his testimony; and you have been truly told, 'that doubt in the present case is acquittal.'" Mr. Justice Chamberlaine, in Finney's trial.

ill health; in addressing myself to jurors on any common subject, I have not been in the habit of addressing myself to the interposition of the court, or to the good-natured consideration of the jury, on behalf of my client. I have mentioned, indeed, my own enfeebled, worn-out body, and my worn-out state of mind, not out of any paltry respect to myself, nor to draw your attention to myself, but to induce you to reflect upon this—that, in the weakness of the advocate, the case of my client, the prisoner at the bar, is not implicated; for, his case is so strong in support of his innocence, that it is not to be weakened by the imbecility or the fatigue of his advocate.

Gentlemen of the jury, I lament that this case has not been brought forward in a simple, and in the usual way, without any extraneous matter being introduced into it, as I think in justice, and as I think in humanity, it ought to have been. I lament that any little artifices should be employed upon so great and solemn a case as this, more especially in desperate times than upon more ordinary occasions; some allegations of criminality have been introduced, as to persons and things, that ought not, in my opinion, to have been adverted to in a case like this. What, for instance, has this case to do with the motion made by Lord Moira in the house of lords in Ireland, in February last, or the accidental conversation of Lord Edward Fitzgerald? If you have a feeling for virtue, I trust that Lord Moira will be revered as a character that adds a dignity to the peerage. What made that noble character forego his great fortune, to quit his extensive domains, and the tranquillity of a philosophic mind, but in the great and glorious endeavour to do service to his country? I must repeat, he is an honour to the Irish peerage. Let me ask, why was the name of Lord Moira (or Lord Wycombe, who happened to dine at Sir Duke Giffard's) introduced into this trial? What has the motion which Lord Moira introduced into the house of lords to do with the trial of Mr. Oliver Bond on a charge of high treason?

Gentlemen of the jury, you have been addressed as against a person by whom a fire has been supposed to have been kindled, and this, too, at the period of its being extinguished. [Some ignorant persons in the crowded gallery having created some noise in the court, prevented the learned advocate a few minutes from proceeding. The court said they would punish any person who dared to interrupt, the counsel for the prisoner, and said they hoped Mr. Curran would be able to proceed in stating the prisoner's case.]

Mr. Curran in continuation. I have very little hope to be able to discharge my duty, but I impute the interruption to mere accident; I cannot suppose it was levelled against me, but I am afraid it was excited by prejudice. Gentlemen of the jury, I was cautioning you against being prejudiced against my unfortunate client; I fear there is much reason why I should caution you against the influence of any prejudice against the prisoner at the bar. You are to decide, in your verdict, by the evidence given, and the evidence that, on the part of the prisoner, will be laid before you, and you will see the evidence does not support the prosecution. You will banish any prejudices, and let your verdict be the result of cool and deliberate investigation; and not given in the heat of the season, when men's minds may be heated by the circumstances of the times. I shall lay before you the case of my client, to controvert the evidence given on the part of the prosecution, and shall offer to your consideration some observations in point of law, under the judicial control of the court as to matter of law. I will strip my client's case from the extraneous matter that has been attempted to be fastened on it. I feel, gentlemen, the more warm, when I speak to you in favour of my client's innocence, and to bring his innocence home to your judgment. I know the honesty and rectitude of your characters, and know my client has nothing to fear from your understandings.

It is my duty to state to you, we have evidence to prove to you, that the witness on the part of the prosecution is undeserving of credit, and it is my duty to apprise you, that it is your duty to examine into the moral character of the witness that has been produced; and it is of the utmost concern you should do this, as your verdict is to decide on the life or death, the fame or dishonour, of the prisoner at the bar. With respect to prosecutions brought forward by the state, I have ever been of opinion, the decision is to be by the jury, and as to any matter of law, the jury do derive information from the court; for jurors have, by the constitution, a fixed and permanent power to decide on matter of fact, and the letter of the law the sovereign leaves to be expounded by the mouth of the king's judges. Some censure on former occasions hath fallen on former judges, from a breach of this doctrine. Upon a former occasion I differed in opinion from the learned judge who then presided, as to what I conceived to be the law, as to what is to be construed in the law of high treason, as to the compassing or imagining the death of the king; I am not ashamed of the opinion in the point of law I entertained; I never shall be ashamed of it. I am extremely sorry I should differ from the bench in opinion on a point of law, but judges have had different opinions on the same subject. When an overt act is laid of compassing and imagining the death of the king, it does not mean, in construction of law, the natural dissolution of the king; but where there was not the fact acted upon, but confined merely to the intention a man had, the proof of such intention must, according to Lord Coke and Sir M. Foster, be proved by two witnesses in England; the stat. of Edw. III. provides against the event of the death of the king by any person levying war, whereby his life might become endangered. The proof of such overt act must, in England, be substantiated by two witnesses; how it comes not to be so settled and required in Ireland, is not accounted for.

Before the stat. of Edw. III. the law relative to high treason was undefined, which tended to oppress and harass the people; for, by the common law of England, it was formerly a matter of doubt whether it was necessary to have two witnesses to prove an overt act of high treason. Lord Coke says, that in England, there must be two witnesses to prove an overt act; it seems he afterwards was of a contrary opinion; but in the reign of William III. a statute passed, and by that statute it appears there must be two witnesses; but when that statute came to be enacted here, the clause relative to there being two witnesses to an overt act of high treason is not made the law in Ireland, but why it was not required in Ireland is not explained. By the English act of William III. in England, the overt act must be proved by two witnesses, but it does not say so in Ireland; but, as the common law of England and the common law of Ireland is the same, the consciences of an Irish jury ought to be fully satisfied, by the testimony of two witnesses to an overt act; but, on this point, however, some of the Irish judges are of opinion, that two witnesses are not, in Ireland, required to substantiate an overt act: therefore their opinion must be acquiesced in. Let me suppose that Confucius, Plato, Solon, or Tully, or any other great philosopher, was of opinion, on any particular point, as suppose, for instance, that on the statute of William III. in order to have a just and equal trial, there must be two witnesses to prove an overt act; Blackstone and Montesquieu are of opinion we should have the equal protection to our liberties, why then should not a jury in Ireland require the same evidence, *i. e.* two witnesses here as well as in England? [The learned counsel referred to the statute of Edw. III. the act of Wm. III. on high treason, Blackstone's Commentaries, Montesquieu's Spirit of Laws, Coke, and Foster's Pleas of the Crown.]

Gentlemen of the jury, let me state to you, in the clearest point of view, the defence of the prisoner at the bar, and see what has been the nature of the evidence adduced. The

prisoner at the bar is accused of compassing or imagining the death of the king, and of adhering to the king's enemies. The evidence against him is *parol* and *written* evidence. Now, gentlemen of the jury, I will venture to observe to you, that as to the *written* evidence, if suffered to go before you by the court, it is only as evidence at large, but as to the credibility of it, that is for you to decide upon: Mr. Reynolds, in his *parol* testimony, has sworn, that he was made a United Irishman by the prisoner at the bar; Mr. Reynolds says he was sworn to what he considered to be the objects of that society; he stated them to you, but whether true or false, is for you to determine, by the credit you may give to his testimony. This is the third time Mr. Reynolds has appeared in a court of justice, to prosecute the prisoners. He says the *objects* of the United Irishmen are to overturn the present government, and to establish a republican form of government in its stead, and to comfort and abet the French, on their invading this kingdom, should such an event take place. You have heard his testimony: let me ask, do you think him incapable of being a villain? Or do you think him a villain? You observed with what kind of pride he gave his testimony; do you believe his evidence by the solemn oath you have taken? Or do you believe it was a blasted perjury? Can you give credit to any man of a blasted character? It has been the misfortune of many former jurors to have given their verdict founded upon the evidence of a perjured witness, and on their death-beds they repented of their credulity in convicting a man upon false testimony: the history of former ages is replete with such conduct, as may be seen in the State Trials, in the case of Lord Kimbolton and Titus Oates. The then jurors convicted that nobleman, but some time after his death, the jurors discovered they had given implicit credit to a witness unworthy of it; and the lawyers of those times might have said, "I thank God *they* have done the deed." Does not the history of human infirmity gave many instances of this kind?

Gentlemen, let me bring you more immediately to the case before you; had we no evidence against Reynolds, but his own solitary evidence; from the whole of his evidence you cannot establish the guilt of the prisoner at the bar; take the whole of his evidence into your consideration; it may appear he is unworthy of credit. He told you he got information from M'Cann on the Sunday morning, that the meeting was to be on Monday morning at 10 o'clock. Reynolds goes immediately to Mr. Cope, and gives him that information—on Sunday afternoon he goes to Lord Edward Fitzgerald, and shows him the orders issued by Captain Saurin to the lawyers' corps: then, said Lord Edward, I fear government intends to arrest me; I will go to France, and hasten them to invade this country—government has no information of the meeting of provincial delegates at Bond's. No, says Reynolds, that is impossible! Reynolds wrote to Bond he could not attend the meeting, as his wife was ill; Reynolds did not go to the meeting. Bond was arrested on Monday morning; on Monday evening at eight at o'clock, Reynolds goes to Lord Edward in Angler-street, met him, and goes again to him the next night, and Lord Edward conversed with Reynolds about his (Lord Edward's) going to France. Reynolds then went to Kildare; he gave the most solemn assurance to the delegates, at a meeting there, that he never gave information of the meetings at Bond's! Now see how many oaths Reynolds has taken! he admits he took two of the obligations to the Society of United Irishmen. He told you Lord Edward advised him to accept of being colonel of Kildare United Irishmen's army, and yet, he says, he afterwards went to Bond's, and Bond advised him to be a colonel. It appeared in evidence that Reynolds was a treasurer; he took two more oaths, one as colonel, and one as treasurer, and he took the oath of allegiance also, and he took an oath to the truth of his testimony, at the two former trials, and at this—on which do you give him credit?

Gentlemen, in order to narrow the question under your

consideration, as to what Reynolds said relative to Lord Edward's conversation, it is totally out of this case; it can have no weight at all on the trial of Mr. Bond for high treason, in the finding of your verdict. How, or in what manner, is the prisoner at the bar to be affected by it? I submit to your lordships, that the declarations of Lord Edward to Reynolds, when Bond was not present, is not attachable to the prisoner. Mr. Reynolds has given you a long account of a conversation he had with Mr. Cope, relative to the proceedings of the Society of United Irishmen, and Mr. Cope said, if such a man could be found as described by Reynolds, who would come forward and give information, he would deserve the epithet of "Saviour of his Country!" Thus, by Reynolds's evidence, it would seem that Mr. Cope was the little pony of repentance, to drive away the gigantic crimes of the *Colossus Reynolds*—but remember, said Mr. Reynolds, though I give information, I won't sacrifice my morality; I won't come forward to prosecute any United Irishman. No, no; like a bashful girl higgling about the price of her virtue, I am determined, says Reynolds, to preserve my character. I will give the communication; but do not think I will descend to be an informer. I will acquaint you with every thing against the United Irishmen, but I must preserve my credit. I tell you the design of the United Irishmen is to overturn the constitution. I will lead you to the threshold of discovery; but I won't name any price for reward. Pray don't mention it at all! Says Mr. Cope, a man would deserve a thousand or fifteen hundred a year, and a seat in parliament, or any thing, if he could give such information. No such thing is required, no such thing, says Reynolds. You mistake me; I will have nothing in the world but merely a compensation for losses. Do you think I would take a bribe? I ask only of you to give me leave to draw a little bit of a note on you for five hundred guineas; only by way of indemnity for losses I have sustained, or am liable to sustain.

Gentlemen of the jury, don't you see the vast distinction

between a *bribe* and a *gratification*? What says Father Foigard? "Consider my conscience; do you think I would take a bribe? It would grieve my conscience if I was to take a bribe!" To be a member of parliament, and declare for the ayes or noes. I will accept of no bribe. I will only take a little indemnity for claret that may be spilt, for a little furniture that may be destroyed, for a little wear and tear, for boots and shoes; for plate destroyed; for defraying the expenses of some pleasurable jaunts, when out of this country; for if I become a public informer against the United Irishmen, and should continue here for some time, I may chance at some time to be killed by some of them, for I have sworn to be true to *them*, and I also took the oaths of allegiance to be true to my *sovereign*; *I have taken all sorts of oaths*; if I frequent the company of those who are loyal to the king, they will despise the man who broke his oath of allegiance, and between the Loyalists and the United Irishmen I may chance to be killed.

As I am in the habit of living in the world, says Mr. Reynolds to Mr. Cope, you will give me leave to draw a bit of paper on you at present, only for 300 guineas; it will operate like a bandage to a sore leg; though it won't cure the sore, or the rottenness of the bone, it may hide it from the public view. I will, says Mr. Reynolds, be newly baptized for a draft of 300 guineas, and become a public informer for a farther bit of paper, only for another 200 guineas; yet I trust you will excuse me, I will not positively take any more. He might, I imagine, be compared to an artful girl, who says, what! shall the brutal arms of man attack an innocent maid, and she not stipulate for full wages, when her gown shortens, and her apron bursts asunder, and she sinks down to public prostitution; perhaps he practised upon her virtue, when he thought he was gaining the affections of an innocent woman. Do you think that Reynolds would touch a bribe, and become an informer? No, no; he said *he would be no informer!* But did he not consent to do a little

business in private! And did he not GET MONEY FOR IT? Perhaps he said, I would not have the world think me a villain, yet, as I can confide in myself, why should I mind what the world says of me, though it should call me villain? Even though I should become the talk of all the porter-houses, though I should become the talk of all the tea-tables, yet perjury is not brought home to me. No; no human being has knowledge of what is rankling within. Has it not been said I was an honest man to come upon the public table as a public informer? They did call me an honest man, a worthy, a respectable informer, and thus my character is at bay. The world has heard of the progress of my crimes, and that I was a professed United Irishman.

He told you there was a provincial meeting of delegates, but he has not ventured to tell you where the provincial committee met; he has simply said there was a provincial committee. It is a question of great concern; I have doubts about it. It is not stated to me what these important consultations were about. From M'Cann he heard that a baronial meeting was to be at Bond's on the 12th of March, and that there was material business to transact, and desired Reynolds to attend. That is all that Reynolds heard from M'Cann, and M'Cann is now no more; and this part of the case is doubt and obscurity. For my part, I am not satisfied that any thing criminal did pass at the meeting at Bond's on the 12th of March. No man can say so. On the evidence produced, they do not say that, they only do *suppose* there was. Were the jury to judge of their own present view, I do not think they would come justly with their verdict of condemnation. The question is not whether there was any meeting at Bond's, but what was the *object* of that meeting? Bond was in the warehouse in the custody of the guard; afterwards he came up to the room with Mr. Swan. At Bond's there was a meeting of the United Irishmen, and though Bond was not taken in that room, yet Bond's charge is mixed with the guilt of that meeting.

The overt act in the indictment is for conspiring to levy war, &c. It is material to observe, in this part of the case, it was "a bare conspiracy to levy war;" it is not, as I conceive, high treason; the bare intention does not amount to compassing or imagining the death of the king—it is not adhering to the king's enemies. Under certain circumstances, this is not high treason of compassing the death of the king. This is the great hinge, as I apprehend, in this case.

Gentlemen, what was the evidence given? That there was a meeting for a dangerous purpose. M'Cann said there was to be a meeting of the delegates at Bond's on the 12th of March—he did not tell Reynolds the *purport* of that meeting; therefore, gentlemen, my objection is, was that a provincial meeting? It rests on the evidence of the informer, and no other witness. It was M'Cann told Reynolds, you ~~must~~ be at the convention on the 12th of March, "to compass the death of the king, and to overturn the government"—but Bond did not tell him any such thing—Bond only said "M'Cann was able to give information of what was going forward at that meeting;" but Bond knew nothing about it; though admitting a meeting was held in Bond's house for a guilty purpose, yet Bond might be perfectly innocent; he was not in the room till Mr. Swan came. There was to be a watchword, "is M'Cann here?" from thence it would seem it was a meeting at M'Cann's suggestion. Mr. Bond, probably, did not know the motive why he gave the use of the room; for there was not one word of conversation between Bond and Reynolds. Reynolds says M'Cann told him the watchword. M'Cann did not get the watchword from Bond, the prisoner at the bar; the watchword was, "Is M'Cann here?" It was for the admission of no person that M'Cann did not know; it had no relation to Mr. Bond. Has this no weight with you, gentlemen of the jury? Do you feel anxious to investigate the truth? If you believe Reynolds, the meeting was for the worst purpose; but was it with the knowledge of Bond? for Bond said to Reynolds, "I

can give you no information; go to M'Cann, he can inform you." Upon the evidence, therefore, of Reynolds, rests this man's life; for the written evidence found in the room cannot, in my apprehension, affect Bond, if you are, as no doubt you will be, of opinion, Bond was not in the room where the papers were found.

There is not any evidence of the conversation before Mr. Swan came, and he found on the table a paper written on, and the ink not dry, "I A. B. was duly elected." It was not found upon the prisoner at the bar. The papers found might affect the persons in the room; but, at the time of the seizure of the papers, Bond was in the warehouse in custody of Serjeant Dugan, and was not brought up stairs until after the arrest. The papers found upon Bond might be read in evidence against him, but, I conceive, not those found in the room. What was the intention of mentioning the letters from Reynolds, found on the prisoner at the bar? It was stated, but not read in evidence, merely to apologize for Reynolds's not attending the meeting on the 12th of March. Reynolds says he got it again and burnt it. Reynolds did not pretend to state to you he knew from Bond what the object of the meeting was; and it is material to observe, that Bond's name was not found entered in the list of the persons who made returns, and attended the meeting.

Mr. Bond has been resident in this city 20 years; in your walks of life, gentlemen of the jury, you never heard any thing to his prejudice before this charge. I know my duty to my client, and must tell you if you have had prejudices I know you will discard them. I am not paying you any compliments; I have spoken under the feelings of an Irishman during the course of these trials; I have endeavoured to speak to your understandings; I have not ventured to entreat you on behalf of my client, because I am sure you will give your justice and your merits free operation in your minds and consciences at this trial. I am sure you will

try the cause fairly, and admit every circumstance into your reflection. In a case between the crown and the prisoner, I have not ventured to address you on the public feelings at this important crisis; you will preserve the subject for the sake of the law, and preserve the law for the sake of the crown. You are to decide by your sober and deliberate understandings, and hold the balance equal between the crown and the subject, for you are called upon to pronounce your sentence of condemnation or acquittal of the prisoner at the bar. If you should be mistaken in your verdict, it cannot shake the safety of the state; you are called upon, with the less anxiety, because whichever way your verdict may be, you are not to be told, remember the safety of your king, or of your own safety; you are to have in recollection your solemn oath to decide according to the evidence, and give such a verdict as may always be satisfactory to your consciences to the last moment of your existence.

The court will tell you, it is your province to decide on matter of fact, and as to opinion on matter of law, the court will explain that to you. Your verdict can never die. As to my opinions of the law, whatever they may be, I shall never have an opportunity of uttering them to you again; your verdict will stamp infamy on the prisoner, or support the throne of the law; I need not remind you that the present moment is awful. My friends, if you suffer your consciences to be influenced, to be degraded, into opinions of the consequences of your verdict; you are bound to decide by the evidences, the glorious privilege of trial by jury. If martial law must cut the thread of brotherly affection, the necessity of it will cease; for verdicts of honest jurors will restore your country to peace and tranquillity, and the liberties of your country will by that means be secured, and the supreme government of the nation be protected and supported, whatever the form of that government may be. Let me, however, ask, is there no species of law to be resorted to but terror? Let me observe to you, that the moral law is de-

stroyed, when it is stained with the effusion of blood, and it is much to be regretted, when the terrors of the criminal law are obliged to be resorted to, to enforce obedience to the common law of the land by the people, for the sword may cover the land with millions of deluded men. Is it become necessary to hurl destruction round the land, till it shivers into a thousand particles, to the destruction of all moral law, and all moral obligations? By the common law of the land, no subject is to be deprived of life, but by a trial of his fellow subjects; but, in times when a rebellion prevails in any country, many suffer without the semblance of a trial by his equals. From the earliest period of history down to the present time, there have been, in some parts of the earth, instances where jurors have done little more than record the opinions given to them by the then judges, but it is the last scene of departing liberty. I have read that in the period of the rebellion, in the last century, in England, that jurors, on trials by the common law of the land, have been swayed in their determination by the unsupported evidence of an informer, and oftentimes have proven their verdict was ill-founded, and the innocence of the convicted persons had afterwards appeared. Trials on charges of high treason are of the utmost moment to the country, not merely with respect to any individual, but of the importance it is to the public, that they should know the blessing of trial by jury, and that the jurors will solely determine on their verdict by the evidences, and *maturely weigh the credit of the witnesses against the prisoner.*

At some of these trials of late date, some of you have been present, and you know that the objects of the court and of the jurors are to investigate the truth from the evidence produced, and the jurors are sworn to decide and to bring in a true verdict according to the evidences. One witness has been examined on this trial, who, I think, does not deserve credit; but it is you who are the sole judges whom you will give credit to; but though you know this witness has

given evidence on two former trials, and though the then jury did give credit to his testimony, yet you are not to determine on the faith or precedent of any former jurors, but you are to be solely guided by your own consciences; and you will observe, we have had here two more witnesses to impeach the character of Reynolds, that were not produced on the former trials, and you will, no doubt, throw out of your minds whatever did not come this day before you in the evidence. You will find your verdict flowing from conscious integrity, and the feelings of honourable minds; notwithstanding the evidence of the witness Reynolds, who has been examined upon the table, and whose testimony I need not repeat to you. Perhaps you may be inclined to think he is a perjured witness; perhaps you will not believe the story he has told against the prisoner at the bar, and of his own turpitude; you will do well to consider, it was through a perjured witness that a Russell and a Sydney were convicted in the reign of James II. If juries are not circumspect, to determine only by the evidence adduced before them, and not from any extraneous matter, nor from the slightest breath of prejudice, then what will become of our boasted trial by jury? Then what will become of our boasted constitution in Ireland? When former jurors decided contrary to evidence, it created great effusion of blood in former times. Let me ask, will you, gentlemen, give a verdict through infirmity of body, or through misrepresentation, or through ignorance? You, by your verdict, will give an answer to this.

Gentlemen of the jury, you will weigh in your minds that many inhuman executions did take place in former times, though the then accused underwent the solemnity of a trial; the verdicts of those jurors are not in a state of annihilation, for they remain on the page of history, as a beacon to future jurors; the judges before whom the then accused were tried, have long since paid the debt of nature; they cannot now be called to account why they shrunk from their duty. I call

upon you, gentlemen of the jury, to be firm in the exercise of that solemn duty you are now engaged in; should you be of opinion to bring in a verdict of condemnation against my unfortunate client, for myself I ought to care nothing what impressions may actuate your minds to find such a verdict; it little regardeth me; but it much regardeth you to consider what kind of men you condemn to die, and, before you write their bloody sentence, consider maturely whether the charge against the prisoner is fully proved. If you should, on the evidence you have heard, condemn the prisoner to death, and afterwards repent it, I shall not live among you to trace any proof of your future repentance.

I said, I rose to tell you what evidence we had to produce on behalf of my client, the prisoner at the bar; we shall lay evidence before you, from which you can infer that the witness produced this day is a perjured man; we have only to show to you, as honest men, that the witness is not deserving of credit on his oath; we have nothing more to offer on behalf of my client, the prisoner at the bar. It is your province to deliberate in your consciences, on what evidence you have heard, and whether you will believe the witness you have heard on his oath, or not. Let me ask, will you, upon the evidence you have heard, take away the life of a man of this kind, as the prisoner at the bar, from his wife and from his little children for ever? I told you I was to state the evidences which we had to bring forward on behalf of my unfortunate client; I tell you it is to discredit the testimony of Reynolds; when you have heard our evidences to this point, I cannot suppose you will give your verdict, to doom to death the unhappy and unfortunate prisoner at the bar, and entail infamy on his posterity. We will also produce respectable witnesses to the hitherto unimpeached character of the prisoner at the bar, that he was a man of fair, honest character; you, gentlemen of the jury, have yourselves known him a number of years in this city; let me ask you, do you not know that the prisoner at the bar has always borne the cha-

acter of a man of integrity, and of honest fame? And, gentlemen of the jury, I call upon you to answer my question by your verdict; I feel myself impressed with the idea in my breast, that you will give your verdict of acquittal of the prisoner at the bar; and that by your verdict you will declare on your oaths that you do not believe one syllable that Reynolds has told you. Let me entreat you to put in one scale the base, the attainted, the unfounded, the perjured witness, and in the opposite scale let me advise you to put the testimony of the respectable witnesses produced against Reynolds, and the witnesses to the prisoner's hitherto unimpeached character, and you will hold the balance with justice, tempered with mercy, as your consciences in future will approve.

Let me depart from the scene of beholding human misery, should the life of my client, by your verdict, be forfeited; should he live by your verdict of acquittal, he would rank as the kindest father, and protector of his little children, as the best of husbands and of friends, and ever maintain that irreproachable character he has hitherto sustained in private life. Should our witnesses not exculpate the prisoner from the crime charged on him to the extent as charged in the indictment, I pray to God to give you the judgment and understanding to acquit him. Do not imagine I have made use of any arguments to mislead your consciences, or to distress your feelings. No; but if you conceive a doubt in your minds that the prisoner is innocent of the crime of high treason, I pray to God to give you firmness of mind to acquit him.

I now leave you, gentlemen of the jury, to the free exercise of your own judgments in the verdict you may give. I have not by way of supplication, addressed you in argument; I do not wish to distress your feelings from supplications; it would be the most unfitting to your candour and understandings—you are bound by your oaths to find a true verdict according to the evidence; and you do not deserve the station of jurors the constitution has placed you in, if you do not discharge the trust freely, and according to your consciences.

EVIDENCE FOR THE PRISONER.

Valentine Connor swore that he knew Thomas Reynolds; that he would not believe him on his oath; he spoke from a knowledge of his general character, and also from the transaction between Reynolds and Cope, which he did not think a fair one.

Ann Fitzgerald swore that Reynolds, in her opinion, did not deserve credit on oath; and her reason for thinking so was his conduct to Mrs. Cahil.

Henry Withrington said his sister had the misfortune to be married to Reynolds, and from his general character he did not believe him worthy of credit upon his oath—he said he was sent for to his mother's house, the Saturday before her death. Here it was observed by the court, that this witness contradicted the evidence, Reynolds, about the pitched sheet.

Edward Withrington to the same effect.

Rev. Thomas Kingsbury, sworn on the part of Reynolds, said, that he had known him many years, and that he deserved credit upon oath. The case closed on both sides.

Mr. Ponsonby spoke to the evidence in behalf of the prisoner—and Mr. Saurin replied on the part of the crown.

Mr. Justice Chamberlaine. Gentlemen of the jury, the prisoner at the bar stands indicted for high treason. One of the overt acts laid in the indictment is, that the prisoner at the bar with other false traitors, did enter into a conspiracy to levy war against the king, which is compassing or imagining the death of the king, which by the statute of the 25 Edw. III. is high treason. Although the natural death of the king was not the immediate consequence, the fact of levying war against the king might bring the life of the king into danger; and therefore the statute wisely provides to prevent it, by making it high treason to compass or imagine the death of the king. Whether such compassing or imagining was entered into on this side of the water, or in England, where the

king resides, makes no difference in the case, as the realm of Ireland is a part of the dominions of the king. As the levying war against the king cannot be done without endangering the life of the king, it is high treason to levy such war; and to overturn by force the government of this kingdom, is a compassing or imagining the death of the king, and also constitutes the crime of high treason. The indictment fully states the several overt acts to support the two principal counts in the indictment.

The learned judge expounded to the jury the several overt acts stated in the indictment, and said, if the jury were fully satisfied by the evidences that have been produced, that the prisoner did become a United Irishman for the purpose of overturning, by force, the government of this kingdom; and, to carry it into effect, he did assemble with others about the means of arming men for said purpose, and carrying on said rebellion; if on these, or any other overt acts, laid in the indictment, you, gentlemen of the jury, by the evidences you have heard, should be of opinion that any one of the overt acts is fully proved on the prisoner, it is sufficient to warrant your finding the prisoner guilty. You need go no further, if you find him guilty of any one of the overt acts laid in the indictment.

Now, gentlemen of the jury, it may be necessary to explain to you what the law is upon the subject of high treason. A great deal has been said by the learned counsel for the prisoner in this case, that, by the law of England, two witnesses are, in England, required to prove an overt act of high treason. By the common law of England, in cases of murder, if the jury shall believe the fact proved, one witness is sufficient, as in the case of Sir John Pennington. The common law of England, and the common law of Ireland, is the same, and though the Irish legislature never thought proper to expressly state it, I beg leave to say, I am most firmly of opinion, *that the evidence of one single witness is sufficient to prove an overt act of high treason!*

You, gentlemen of the jury, are to judge by the conduct of Bond, whether he was not connected with the Society of United Irishmen, who met in his house on the 12th of March. There was found on the prisoner at the bar, a paper purporting to be an address to the Society of United Irishmen; it was read in evidence, and will be material for your consideration; you will determine whether you believe Bond was a member of the Society of United Irishmen, and was in the habit of acting with them in their conspiracies, and this you will judge of from the evidence, *parol* and *written*, which has been produced before you in the course of this trial. If you believe the evidence of Reynolds, he told you that Bond was a United Irishman in February, 1797, and afterwards told Reynolds he wished him to be a colonel, *i. e.* colonel of the army for the county of Kildare under the Society of United Irishmen—and, by written evidence, it appears, the intent of that society was, to overturn the constitution of this kingdom by force.

Gentlemen of the jury, upon the whole of this case, you will judge of the verdict you may give, by the evidences which have been adduced before you—you will judge of it as men of sense; you are to determine, on your consciences, whether you do believe that Oliver Bond, the prisoner at the bar, was a member of the Society of United Irishmen, or not. If you have any reasonable doubt upon your minds, you must acquit the prisoner. The whole is left to your judgment.

The jury returned a verdict of GUILTY.

Mr. Bond being asked what he had to say why judgment of death should not be awarded, he tendered a paper purporting to have been the dying declaration of M'Cann (who was lately executed) that he was innocent. The court rejected the paper, as being contrary to known practice.

Mr. Justice Day then pronounced the usual sentence of death against him in cases of high treason, and the prisoner was conducted back to gaol.

COUNSEL for the crown:—The Solicitor-General, Mr. Prime Serjeant, Messrs. Saurin, O'Grady, Mayne, Webber, and Ridgeway.

COUNSEL for the prisoner:—Messrs. Curran and Ponsonby.

OLIVER BOND

Was the son of a dissenting minister in the north of Ireland, and connected by blood, not only with many of the middle classes of the people, but also with those who figure in the first style of rank and fashion. His value, however, did not arise from respectable relationships, but from his own personal merits—his public and private worth as a member of society, as a merchant, a friend, a husband, and a parent; candid, generous, and charitable—no other individual stood higher in the estimation of his fellow citizens.

Such, in a few words, was the man who unfortunately became a United Irishman, and, of course, became suspected of an inclination to the crime of republicanism. But Mr. Bond did not suffer by the hands of the common executioner; so highly were the public interested in his favour, that even those who were adverse to his political opinions joined in the most earnest solicitations to government, to change or mitigate the sentence of death; so powerful and so general were the intercessions in his favour, that government did hesitate. Conferences were held, and negotiations entered into between the castle agents and the leaders of the United Irishmen: the

* By one of these negotiations, a number of the prisoners had made an agreement with government to transport themselves to the United States—when they were informed by Mr. Marsden, one of the under secretaries, “that the American ambassador to the court of St. James’s, had objected to their going to that country.” By this very unexpected interference, these gentlemen were prevented from making America the place of their asylum, and of bringing property with them to a very large amount.

first were to put a stop to the cruel proceedings of the courts martial, the executions, the burnings, the whippings, &c. that then covered the land—the latter, to cease all further efforts on their side, and either to receive pardons, or to banish themselves from the country.

During these negotiations, Mr. Bond was respited from time to time, when, on the morning of the 6th of September, he was found dead in his chamber. In times of suspicion and distrust, the sudden death of a man who was so universally beloved on one side, and so much feared on the other, it is not wonderful that it should be ascribed to "foul play." Since the first edition, we have heard so many accounts, which go to assert that Mr. Bond came unfairly by his death, that we think it best to leave the matter in the same state of uncertainty in which we found it.

. As doubts have arisen respecting these negotiations, and it having been said, that no such interference ever took place, the following letters will put that matter beyond a doubt. We copy them from the original documents, and leave them to the judgment of the reader.

COPY OF A LETTER FROM MR. RUFUS KING, THE AMERICAN MINISTER AT THE COURT OF LONDON, TO MR. HENRY JACKSON, ONE OF THE IRISH STATE PRISONERS.

"Brighton, Aug. 28, 1799.

"SIR,

"I ought to inform you, that I really have no authority to give or refuse permission to you or any other foreigner to go

to the United States; the admission and residence of strangers in that country being a matter that, by a late law, exclusively belongs to the president. It is true that the government of this country in the course of the last year, *in consequence of my interference*, gave me an assurance that a particular description of persons in Ireland, who it was understood were going to the United States, should *not* be allowed to proceed without *our* consent: this restraint would doubtless be withdrawn in favour of individuals against whose emigration I should not object; and I conclude, that it is upon this supposition, that you have taken the trouble to communicate to me your desire to go and reside in the United States. Without presuming to form an opinion on the subject of the late disturbances in Ireland, I entertain a distinct one in relation to the political situation of my own country. In common with others, we have felt the influence of the changes that have successively taken place in France, and, unfortunately, a portion of our inhabitants has erroneously supposed that our civil and political institutions, as well as our national policy, might be improved by a close imitation of the models of France. This opinion, the propagation of which was made the duty, and became the chief employment, of the French agents resident among us, created a more considerable division among our people, and required a greater watchfulness and activity from the government, than could beforehand have been apprehended. I am sorry to make the remark, and shall stand in need of your candour in doing so, that a large proportion of the emigrants from Ireland, and especially in our middle states, has, upon this occasion, arranged itself on the side of the *malcontents*. I ought to except from this remark, most of the enlightened and well educated Irishmen, who reside among us, and, with a few exceptions, I might confine it to the indigent and illiterate, who, entertaining an attachment to freedom, are unable justly to appreciate those salutary restraints without which it degenerates into anarchy. It would be injustice to say that the Irish emigrants are more

national than those of other countries, yet being a numerous though very minor portion of our population, they are capable, from causes it is needless now to explain, of being generally brought to act in concert, and under artful leaders may be, as they have been, enlisted in mischievous combinations against our government. This view leads me to state to you, without reserve, the hesitation that I have felt in your case. On the one hand, we cannot object to the acquisition of inhabitants from abroad, possessing capital and skill in a branch of business that with due caution, may, without risk or difficulty, and with public as well as private advantage, be established among us; but, on the other hand, if the opinions of such inhabitants are likely to throw them into the class of malcontents, their fortune, skill, and consequent influence, would make them tenfold more dangerous, and they might become a disadvantage instead of a benefit to our country. You must be sensible that I possess no sufficient means of forming an opinion respecting your sentiments, but the motives which lead me to interfere with your government to restrain the emigration of the persons above alluded to, oblige me to observe a due caution on the present occasion: at the same time, I desire not to act with illiberality, and should be unwilling to bring upon my country the slightest imputation of inhospitality. What Mr. Wilson* has written, so far as it goes, is satisfactory; and on the whole I have concluded, after this unreserved communication, which I hope will be received with the same candour as it is made, to inform you, authorizing you to make use of the information, that I withdraw every objection that may be supposed to stand in the way of your being permitted to go to the United States, adding only my earnest wish, that you may carry with you an unbiassed mind, may find the state of the country, as I believe you will, favourable to your views of business, and its government deserving your attachment.

* The American Consul in Dublin.

"I must beg your excuse for the great delay that has occurred in sending you this answer, which, I assure you, has arisen from other causes than the want of due respect to your letters.

"With great consideration,

"I have the honour to be,

"Sir, your most obedient servant,

"RUFUS KING."

COPY OF A LETTER FROM LORD CASTLEREAGH TO MR.
JACKSON.

"Dublin Castle, 13th Sept. 1799.

"SIR,

"I return to you the letter of the American minister; and am directed by my lord lieutenant to acquaint you, that you have permission to go to America, on giving the necessary securities, for the execution of which a proper person will attend you. You will be allowed the attendance of such persons as may be necessary to you for the settlement of your affairs; and when the vessel in which you shall engage your passage shall be ready to sail, a messenger will attend your embarkation.

"I am, Sir,

"Your most obedient servant,

"CASTLEREAGH."

THE TRIAL

OF JAMES N. TANDY, ON AN ACT OF ATTAINDER.

KING'S BENCH.

BY virtue of a certiorari directed to the clerk of parliament, the tenor of a certain statute to attain James N. Tandy, Harvey Morris, and others, of high treason, having been returned into chancery, was from thence transmitted into this court by mittimus. The prisoners, Tandy and Morris, on the 10th of February, 1800, were brought into court, when, after having the act of parliament read to them, they were called upon to say, why execution should not be awarded and done upon them according to the statute, of which the following is the

PENAL CLAUSE.

“Whereas the following persons have been notoriously engaged in the said rebellion, either by taking up arms or levying war against his majesty, or by having corresponded with, or adhered to his enemies; or by otherwise fomenting or promoting the same, or acting therein, and being conscious of their guilt, have fled from justice; that is to say, (here follow several names,) James N. Tandy and Harvey Morris. Be it therefore enacted, that the said several persons, and each of them, shall stand attainted of high treason, and shall be liable to all the pains and penalties of law annexed to the

crime of high treason, unless they, and each of them, shall severally, and respectively, surrender themselves to one of the judges of his majesty's court of king's bench; or to some justice of the peace within this kingdom, before the first day of December, 1798, and shall respectively abide such charges as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged."

Further proceedings were then postponed for two days, to give the prisoners' counsel time to consider of the proper defence to be made. On the 12th of February, the court refusing to grant any further delay, the following plea and replication were filed on the part of Tandy, the prisoners having severed in their pleadings:—

THE PLEA.

"And the said James N. Tandy says, that before the first day of December, 1798, to wit, on the 24th day of November, 1798, in parts beyond the sea, to wit, at Hamburgh, he was arrested and imprisoned, by the command, desire, and authority of his majesty our said lord the king; and has been ever since continually detained in prison by the same command, desire, or authority, by reason of which arrest and continual detention, it became impossible for him, the said James N. Tandy, from the time of said arrest, to surrender himself on or before the first day of December, 1798; and continued so impossible until after the first day of December 1798; and this he is ready to verify," &c.

REPLICATION.

"And the said Right Hon. John Toler, Attorney-General of our said sovereign lord the king, who for our present said sovereign lord the king in this behalf prosecuteth, as to the said plea of him the said James N. Tandy, by him above pleaded as aforesaid, for our said present sovereign lord the king,

saith, that the said James N. Tandy did not surrender himself within the time in the said act of parliament mentioned, to wit, on or before the first day of December, 1798, without such cause as in the plea of the said James N. Tandy is by him-alleged; and this he prays may be inquired by the country; and the said James N. Tandy likewise," &c.

The case was then continued on affidavit being made of the absence of a material witness, until

MONDAY, MAY 19.

This day the prisoner being brought into court, and a jury being sworn to try the issue joined between James N. Tandy and Mr. Attorney-General,

Mr. Ridgeway, counsel for the prisoner. My lords, and gentlemen of the jury, in this case of The King against James Napper Tandy, by an act of parliament passed in this kingdom in the 38th year of the king, it is enacted, that James Napper Tandy, among several others, shall stand attainted of high treason, and shall be liable to all the pains and penalties of the law annexed to the crime of high treason, unless they and each of them shall, severally and respectively, surrender themselves to some one of the judges of his majesty's court of king's bench, or to some justice of the peace within this kingdom, on or before the first day of December, 1798, and shall respectively abide such charge as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged.

To this Mr. Tandy has put in a plea in bar, in which he states, that before the 1st day of December, 1798, the day limited by the act of attainder for time to surrender himself, to wit, on the 24th of November, 1798, in parts beyond the sea, to wit, at Hamburgh, he was arrested and imprisoned, by the command, desire, and authority of the king; and has ever since been detained in prison. By reason of which arrest and continual detention, it became impossible

for him, from the time of the said arrest, to surrender himself on or before the said 1st day of December, 1798, and continued so impossible until after the said 1st day of December.

To this plea of Mr. Tandy, the Attorney-General has replied, that he did not surrender himself within the time in the act of parliament mentioned, to wit, on or before the 1st of December, 1798, without such cause as in his plea is alleged. And on this plea and replication issue has been joined.

MR. CURRAN. My lords, and you, gentlemen of the jury, I am in this case of counsel for Mr. Tandy, the prisoner at the bar. I could have wished it had been the pleasure of the gentleman who conducts this business on the part of the crown, if he had gone on first: the subject itself is of a very novel nature in this country, but certainly it is the right of the crown, and which the gentlemen have thought proper to follow, to call on the counsel for the prisoner to go first; and therefore it is my duty, my lords, to submit to you, and to explain, under the direction of the court, to you, gentlemen of the jury, what the nature of the question is that you are sworn to try.

An act of parliament was passed in this country, which began to be a law on the 6th of October, 1798; on that day it received the royal assent. By that law it is stated, that the prisoner at the bar had been guilty of acts of treason of many different kinds: and it enacted, that he should stand attainted of high treason, except he should, on or before the 1st day of December following, surrender himself to one of the judges of this court, or to one of his majesty's justices of the peace, for the purpose of becoming amenable to the law from which he was supposed to have fled, in order to abide his trial for any crime that might be alleged against him.

It was a law not passed for the purpose of absolutely pronouncing any judgment whatsoever against him, but for the purpose of compelling him to come in and take his trial; and nothing can show more strongly that that act of parliament

has not established any thing touching the fact of the prisoner's guilt, because it would be absurd, in one and the same breath, to pronounce that he was guilty of high treason, and then call upon him to come in and abide his trial; and the title of the act speaks, that it is an act not pronouncing sentence against the prisoner, but that it is an act in order to compel him to come forward.

This act creates a parliamentary attainder not founded on the establishment of the prisoner's guilt of treason, but on his contumacious avoidance of trial, by standing out against a trial by law. I make this observation to you, gentlemen of the jury, in order that you may in the first instance discharge from your minds any actual belief of any criminality in the prisoner at the bar, and that for two reasons: first, because a well founded conviction of his guilt, on the authority of this statute, might have some impression on the minds of men sitting in judgment on the prisoner; but for a more material reason I wish to put it from your minds, because his guilt or innocence has nothing to do with the issue you are sworn to try.

Gentlemen, the issue you are called upon to try is not the guilt or the innocence of the prisoner: it is therefore necessary you should understand exactly what it is. The prisoner was called on to show cause why he should not suffer death, pursuant to the enacting clause of the statute; and he has put in a plea, in which he states, that before the time for surrender had expired, namely, on the 24th of November, 1798, seven days before the day that he had for surrendering had expired, he was, by the order of his majesty, arrested and made a prisoner in the town of Hamburgh; and that in consequence of such arrest, it became impossible for him to surrender himself and become amenable to justice within the time prescribed: and the counsel for the crown have rested the case on the denial in point of fact of this allegation; and, therefore, the question that you are to try is simplified to this—"I was arrested," says the prisoner, "whereby it

became impossible for me to surrender"—to which the counsel for the crown reply, "You have not been arrested at the time alleged by you, whereby it became impossible for you to surrender." This I conceive to be the issue in point of fact joined between the parties, and on which it is my duty to explain the evidence that will be offered.

Mr. Tandy, gentlemen, is a subject of this country, and had never been in it from the time this act of parliament passed, until he was brought into it after his arrest on the 24th of November, 1798: on that day he was in the town of Ham-burgh. He had seven days, in which time it was practicable for him to arrive in this country, and surrender himself according to the requisitions of the act of attainder. Every thing that could be of value to man was at stake, and called on him to make that surrender. If he did not surrender, his life was forfeited—if he did not surrender, his fortune was confiscated—if he did not surrender, the blood of his family was corrupted; and he could leave them no inheritance, but the disgrace of having suffered as a traitor.

Your common sense, gentlemen, will show you, that where a man is to forfeit his life unless he complies with the conditions of an act of parliament—your common sense, your common humanity must show you, that a man ought to be suffered to perform the conditions on which his life depends. It can require no argument to impress upon your minds, that to call on a man to surrender himself on pain of death, and by force to prevent him from surrendering, goes to an atrocity of oppression that no human mind can contemplate without horror.

But it seems that the prisoner at the bar was a man of too much consequence to the repose of all the civilized nations; to the great moral system, I might almost say to the great physical system of the universe, to be permitted to act in compliance with the statute that called upon him to surrender himself upon pain of death. The wisdom of the entire continent was called upon to exercise its mediation on this most

momentous circumstance. The diplomatic wisdom of Germany was all put into action on the subject. The enlightened humanity of the north was called on to lend its aid. Gentlemen, you know as well as I the princely virtues, and the imperial gratifications, the consummate wisdom and sagacity of our "stedfast friend and ally," the emperor of all the Russias;* you must feel the awe with which he ought to be mentioned: his sacred person has become embodied in the criminal law of England, and it has become almost a misprision to deem or speak of him but with reverence! I feel that reverence for him; and I deem of him, and conceive him to be, a constellation of all virtue—compared with the radiance of which, the Ursa-major twinkles only as the glow-worm! And what was the result of the exercise of this combination of wisdom? That James Napper Tandy ought not to be got rid of in the ordinary way. They felt an honest and proper indignation, that a little community like Hamburgh should embezzle that carcass which was the property of "a mild and merciful government!"—they felt a proper indignation that the senate of Hamburgh, under the present sublime system, should defraud the *mercy* of the government of the blood of the prisoner, or cheat the gibbet of his bones, or defraud the *royal* ravens of this country of his flesh—and accordingly, by an order issued to these miserable inhabitants of the town of Hamburgh, who were made to feel that common honesty and common humanity can only be sustained by a strength not to be resisted, they were obliged to break the ties of justice and hospitality; to trample on the privileges that every stranger claims; and they were obliged to suffer the prisoner to be trampled on, and meanly, and cruelly, and pitiaibly, to give up this unfortunate man to the disposal of those that could demand him at such a price!

If a surrender in fact had been necessary to the prisoner, certainly a very material object was achieved by arresting

* Here is a fine satire on the mad doings of Paul I. &c..

him; because, they thereby made it impossible for him to avail himself of the opportunity. They made it impossible for him to avail himself of the surrender, if the reflection of his mind led him to it. If a sense of the duty he owed his family led him to a wish, or to an intention, of availing himself of the remaining time he had to surrender, they were determined he should not take advantage of it. He had been guilty of what the law deems a crime, that is, to fly from justice, though it does not go to the extent of working a corruption of blood; but by this act of power, by this act of tyrannic force, he was prevented from doing that act which every court of justice must believe he was willing to do—which the law intends he would have done—which the law gave him time to do—which the law supposes he might have done, the last hour as well as the first. He was on his passage to this country; that would not have taken up a third part of the time that had now elapsed; but, by seizing on him in the manner he was arrested, it became impossible for him to surrender himself, or become amenable to justice. But, gentlemen, the prisoner when he was arrested, was treated in a manner that made it impossible for him to do any act that might have been considered as tantamount to a surrender. He was confined in a dungeon, little larger than a grave—he was loaded with irons—he was chained by an iron that communicated from his arm to his leg, and that so short as to grind into his flesh! In such a state of restriction did he remain for 15 days; in such a situation did he lay, in a common vault; food was cut into shapeless lumps, and flung to him, by his filthy attendants, as he lay on the ground, as if he had been a beast: he had no bed to lay on—not even straw to coil himself up in, if he could have slept! In that situation he remained, in a foreign country, for 15 days of his long imprisonment; and he is now called to show good cause why he should not suffer death, because he did not surrender himself, and become amenable to the law! He was debarred all communication whatsoever: if he attempted to speak to the

sentinels who guarded him, they could not understand him; he did make such indications of his misery and his sufferings as could be conveyed by signs; but he made them in vain. And he is now called upon to show cause wherefore he did, contumaciously and traitorously, refuse to surrender himself, and become amenable to the law!

Gentlemen of the jury, I am stating facts that happened in a foreign country: will you expect that I shall produce witnesses to lay those abominable offences before you in evidence? It was not in the power of the prisoner at the bar to procure witnesses; he was not of importance enough to call on the armed civilization of Europe, or on the armed barbarity of Europe, to compel the inhabitants of the town where he was imprisoned to attend in this court, to give evidence for the preservation of his life; but though such interposal could not be obtained to preserve his life, it could be procured for the purposes of death. And it is one reason why the rights of neutral states should be respected; because, if an individual, claiming those privileges, be torn from that sanctuary, he comes without the benefit of the testimony of those that could save his life. It is a maxim of law, that no man shall lose any thing, much less his life, by the non-performance of a condition, if that non-performance had arisen by the act of God, or of the party who is to avail himself of the condition; that the impossibility so imposed, shall be an excuse for the non-performance of the condition. That is the defence the prisoner relies upon. "Why did you not surrender, and become amenable to justice?" "Because I was in chains." "Why did you not come over to Ireland?" "Because I was a prisoner in a grave in the town of Hamburgh." "Why did you not do something tantamount to a surrender?" "Because I was unpractised in the language of the stranger, who could not be my protectors, because they were also my fellow sufferers." But he may push this reasoning much farther; the statute was made for the express purpose of making him amenable. When the crown

seized him at Hamburgh, it thereby made him amenable, and so satisfied the law. It could not seize him for execution, as an attainted person; for the time had not arrived when the attainer could attach. The king, therefore, seized him, as a man liable to be tried; and yet he calls upon him to suffer death, because he did not make himself amenable by voluntary surrender, that is, because he did not do that which the king was pleased to do for him, by a seizure, which made it at once unnecessary and impossible for him to do by any voluntary act.

Such is the barbarity and folly that must ever arise when force and power assume the functions of reason and justice. As to his intention after the arrest, it is clearly out of the question. The idea of intention is not applicable to an impossible act. To give existence to intention, the act must be possible, and the agent must be free. Gentlemen, this, and this only, is the subject on which you are to give a verdict. I do think it highly honourable to the gentleman who has come over to this country, to give the prisoner at the bar the benefit of his evidence; no process could have compelled him: the inhabitants of foreign countries are beyond the reach of process to bring witnesses to give evidence. But we have a witness, and that of the highest respectability, who was himself at Hamburgh, at the time Mr. Tandy was arrested, in an official situation. We will call Sir James Crawford, who was then the king's representative in the town of Hamburgh. We will show you, by his evidence, the facts that I have stated; that before the time allowed to the prisoner to surrender had elapsed, Sir James Crawford did, in his official situation, and by orders from his own government, cause the person of Mr. Tandy to be arrested in Hamburgh. Far am I from suspecting or insinuating on Sir James Crawford, that any of the cruelties that were practised on that abused and helpless community, or on my abused client, were committed at his instance or personal sanction—certain am I, that no such fact could be possible.

I told you before, gentlemen, that the principal question you had to try was, the fact on which the parties had joined issue; the force and arrest alleged by the prisoner, and the denial of that force by the counsel for the crown. There is one consideration that I think necessary to give some attention to. What you may think of the probable guilt or innocence of the prisoner, is not within the question that you are to decide; but if you should have any opinion of that sort, the verdict given in favour of the prisoner can be no preclusion to public justice, if, after your verdict, they still call for his life; the utmost that can follow from a verdict in his favour will be, that he will be considered as a person who has surrendered to justice, and must abide his trial for any crime that may be charged against him. There are various ways of getting rid of him, if it is necessary to the repose of the world that he should die. I have said if he has committed any crime, he is amenable to justice, and in the hands of the law: he may be proceeded against before a jury; or he may be proceeded against in another and more summary manner: it may so happen that you may not be called upon to dispose of his life or of his character finally. Whatever verdict a jury can pronounce upon him will be of no final avail. There was, indeed, a time, when a jury was the shield of liberty and life. There was a time, when I never rose to address it, without a certain sentiment of confidence and pride—but that time is past.

I have no heart now to make any appeal to your indignation, your justice, or your humanity. I sink under the consciousness that you are nothing. With us, the trial by jury has given place to shorter, and, no doubt, better modes of disposing of life. Even in the sister nation, a verdict can merely prevent the duty of the hangman, but it never can purge the stain which the first malignity of accusation, however falsified by proof, stamps indelibly on the character of

an "acquitted felon."* To speak proudly of it to you would be a cruel mockery of your condition; but let me be at least a suppliant with you for its memory. Do not, I beseech you, by a vile instrumentality, cast any disgrace upon its memory. I know you are called out to-day to fill up the ceremonial of a gaudy pageant, and that to-morrow you will be flung back again among the unused and useless lumber of the constitution; but trust me, the good old trial by jury will come round again; trust me, gentlemen, in the revolution of the great wheel of human affairs, though it is now at the bottom, it will reascend to the station it has lost, and ~~once~~ more assume its former dignity and respect; trust me, that mankind will become tired of resisting the spirit of innovation, by subverting every ancient and established principle, and by trampling upon every right of individuals, and of nations. Man, destined to the grave—nothing that appertains to him is exempt from the stroke of death—his life fleeth as a dream, his liberty passeth as a shadow. So too of his slavery—it is not immortal; the chain that grinds him is gnawed by rust, or it is rent by fury, or by accident, and the wretch is astonished at the intrusions of freedom, unannounced even by the harbinger of hope.

Let me therefore conjure you, by the memory of the past, and the hope of the future, to respect the fallen condition of the good old trial by jury, and cast no infamy upon it. If it is necessary to the repose of the world that the prisoner should die, there are many ways of killing him—we know there are; it is not necessary that *you* should be stained with his blood. The strange and still more unheard-of proceedings against the prisoner at the bar has made the business of this day a subject of more attention to all Europe than is generally excited by the fate or the suffering of any individual. Let me, therefore, advise you, seriously to reflect upon your situation before you give a verdict of

* Mr. Windham's phraseology—he who lately said "that *Peter Percepsino* deserved a statue of gold for his conduct in America!"

meanness and blood that must stamp the character of folly and barbarity upon this already disgraced and degraded country.

EVIDENCE FOR THE PRISONER.

Sir James Crawford deposed that he was the king's minister plenipotentiary at Hamburgh, in 1798; that in consequence of orders transmitted to him from his majesty's secretary of state, he made a requisition of the senate of Hamburgh to have James N. Tandy arrested and confined; which was accordingly done on the 24th of November, 1798, and he was continued in close custody until the 1st of December following—that he believes Tandy was in Hamburgh on his way to Paris—that the senate of Hamburgh, as this deponent understood, at the instance of Tandy, made application to this deponent to release him on the ground of his being a commissioned officer in the army of the French republic. No application was made to this deponent to send Tandy either to England or Ireland, and if there had, this deponent would have endeavoured to transmit him to England as soon as possible, which, however, he could not have done without the consent of the senate of Hamburgh, as they for some time refused to give Tandy up, lest they should embroil themselves with the French republic, under which they were informed he held a military commission.* This deponent supposes it possible, with fair winds, to come from Hamburgh to Yarmouth, in England, in 37 hours.

G. Smith swore that he was sent on behalf of the prisoners to Hamburgh, with a subpoena, for Sir James Crawford, Mathias Myer, and Ferdinand W. Walbourn; and by the authority of the prisoners offered to defray their expenses

* They were involved with the French government. Bonaparte not only wrote them an angry letter, but obliged them to pay a large sum of money by way of *quietus*.

to any amount they might fix on; they did not all obey the summons; the two latter are not here.

Mr. Attorney-General then addressed the court and jury—he spoke at great length upon the case of Lord Duffus as being strongly in point; after him Mr. Prime Serjeant made some few observations.

Mr. Ponsonby, in reply, observed; it would have been just as pertinent to the point to have quoted the case of the six carpenters, or the case from Swift, of Stradley versus Styles, as that of Lord Duffus. He then commented upon the testimony, and the law applicable thereto, and said, that had the two witnesses of Hamburgh attended, Mr. Curran's statement, as to the manner in which the prisoner had been treated, would have been fully proven.

Mr. McNally spoke to the same effect.

Mr. Ridgeway was stopped by the court.

Lord Kilwarden. Gentlemen of the jury, you have a plain and simple issue, on a question of fact, to decide; and on as simple and plain evidence as ever was laid before a court and jury. The question you have to try is, whether James N. Tandy, the prisoner at the bar, was arrested on the 24th day of November, 1798, by authority derived from the king; and that by reason of that arrest, and continual detainer under that arrest, from the day of the arrest to the first day of December in the same year 1798, it became impossible for the said James N. Tandy to surrender himself, on or before the first day of December, 1798.

Before I state the evidence, I will trouble you by stating the occasion of the present inquiry. An act of parliament passed in this country on the 5th day of October, 1798, entitled "An act to compel certain persons who have been engaged in the late rebellion which hath broken out in this kingdom, to surrender themselves and abide their trials, respectively, within a limited time, on pain of being attainted of high treason." And then the act goes on, and recites the names of certain persons charged with being concerned in

acts of treason, and, among the rest, the prisoner, and that he had fled; and then the act proceeds to adopt such measures as may bring them in, and render them to justice; then it goes on and says, that each of them "shall stand attainted of high treason, and shall be liable to all the pains and penalties by law annexed to the crime of high treason, unless they, and each of them, shall severally and respectively surrender themselves to some one of the judges of his majesty's court of king's bench, or to some justice of the peace within this kingdom, on or before the first day of December, 1798, and shall respectively abide such charges as shall be made against them respectively, for and on account of the several treasons aforesaid, with which they have been charged.

The parties mentioned in this act had until the last moment of the day of the first of December, 1798, to surrender themselves; and, gentlemen, you will observe, that the object of this act was not to attain or punish any man; but it was to compel every man, mentioned in it, to do that which every subject of the realm was bound to do, namely, to surrender himself to justice; and the act does expressly say, that he must surrender himself, and take his trial for any charges that shall be brought against him. The end and purport of the act was not to inflict punishment on the party, or to condemn him to death unheard; but it was to compel him to do that which he ought to do, namely, to surrender himself: and in case he did not surrender himself, the act then went further, and enacted, that the fact with which he was charged, should be taken as confessed, and that he had acknowledged the crime. I have stated so much, to you, to remove from your minds what cannot indeed enter into them—that you have no more to do with the criminality of Mr. Tandy than you have with the criminality of any other person alive; and it is your duty to suffer no such idea to enter into your minds. It is necessary for me to go further: I will state this to you—that by finding a verdict in favour of the prisoner at the bar, it will produce no other effect than giving the

crown an opportunity of indicting him for such charges as they may have against him; and, in my apprehension, the intention or criminality of the prisoner is out of the question.

I wish you to bear in your mind what the issue to be tried is; it is what I have stated—Whether Mr. Tandy was arrested on the 24th day of November, 1798, and kept in close custody; and *quoad*, whether it was thereby rendered impossible for him to surrender himself? As to his will or intention, it is not given to you in evidence, nor are you bound to inquire into it; and if you suffer that to enter into your consideration, you will find a verdict, if you find against the prisoner, on a fact that had no right to go to you in evidence. It is not what his intention was, or might have been, on the 23d of November, 1798, to go to Paris, and on the 24th to come to Ireland; that is beyond your inquiry, and if you enter into a consideration on that subject, you do that which you were not sworn to try. But you are sworn to try if he was, from that day until the time limited had elapsed, continually confined; and if it was thereby rendered impossible for him to surrender himself to one of the judges of the court of king's bench, or to some justice of the peace within this kingdom.

For my part, I cannot conceive it. And I have the direction of my brethren on the bench, to say for them what I have already said for myself; that it is a case particularly clear, and on which there can be no doubt, that there was an impossibility from the time of the prisoner's arrest on the 24th day of November, 1798, until the last moment of the first of December following, to surrender himself according to the requisitions of the statute.

The jury retired for a few minutes and then returned their verdict, "we find for the prisoner."

Mr. Attorney-General then stated, that as the same evidence was applicable to the prisoner Harvey Morris, he would withdraw the replication, and confess the plea; which being done, he prayed that the prisoners might be remanded for the present.

The prisoners were accordingly remanded.

A bill of indictment for high treason being soon after found against Mr. Tandy at Lifford, in the county of Donegal, he was accordingly transmitted to that place to be tried by the circuit judges.

LIFFORD, APRIL 7.

THE KING V. TANDY.

At 10 o'clock Mr. Justice Chamberlaine and Mr. Justice Fox took their seats on the bench, and the prisoner being brought up, was asked by the clerk of the crown whether he was ready for his trial.

Mr. Rolleston then rose and moved the court, that the indictment, and the several proceedings had thereon, might be read; and observed that the counsel at present concerned for Mr. Tandy had no opportunity of knowing what they were.

Mr. Justice Chamberlaine said, that as the prisoner had been served with a copy of his indictment, there was no necessity, nor had he a right to have it read.

Mr. Rolleston then moved that the writ, by virtue of which the indictment had been remanded from the court of king's bench, should be read. It was read accordingly, and it recited, "that a writ of *certiorari* had formerly issued to remove the indictment, and all matters touching the same, from Lifford into the court of king's bench," and then proceeded to remand the said indictment, and all matters touching the same, in order that the justices of gaol delivery and oyer and terminer might proceed thereon, "in such a manner as they might have done if the said indictment had never

been brought into the court of king's bench." Mr. Rolleston said, that upon this writ he conceived his client had a right to plead, as if no plea had been put into the court of king's bench, inasmuch as this writ authorized the court in which he then stood, to proceed only in such manner "as they might have done, if the said indictment never had been brought into the court of king's bench:" the proceedings, therefore, as he contended, were to be taken now, precisely in the same situation as they stood when they were removed by the writ of *certiorari*, and at that time it was admitted that the prisoner had not been put to plead. He therefore moved, "that the prisoner be now put to plead."

Mr. Schoales, on the same side, said, that the present motion was founded on the presumption, that any proceeding had in the court of king's bench, after the indictment was removed thither, must be considered by this court as matters of which they had no authority to take cognisance; a point which he hoped to be able clearly to prove. This court, he said, derives its jurisdiction from his majesty's commissioners of oyer and terminer and gaol delivery, and is not an emanation from the court of king's bench, nor any otherwise dependent thereon. He observed that the writ which had been read, was founded upon two statutes passed in Ireland, the 11 and 12 Geo. III. c. 34. and 21 and 22 Geo. III. c. 51. These acts showed that by the common law, as it stood before they were enacted, this indictment could not have been remanded at all, but the prisoner must have been tried in the court of king's bench. But by those statutes, the court was empowered to remand what?—not the plea, if any plea was put in—not the other proceeding which might have been had in the court of king's bench, but only the prisoner and his indictment; such were the words of the statute; and what proved demonstratively that the legislature did not intend to give the court of king's bench authority to send down any of the proceedings had before them, was the concluding paragraph of the statute, which directed that such indictments should be

proceeded on "in such manner as should have been done if the said prisoners, or their indictments, had never been brought in to the said court of king's bench." Now, if Mr. Tandy had not been brought up by the *certiorari*, nothing could be remanded by the court of king's bench but what had been previously removed into it: and what was that? the indictment, and the indictment alone. With respect to the words used in the writ, "all matters touching the same," Mr. Schoales contended, that these words were not found in, nor were they authorized by the statutes which created the writ, and were therefore to be considered as mere surplusage.

The court, after hearing the Right Hon. the Attorney-General (John Stuart) in reply, refused the motion. Their lordships were of opinion that the arguments in support of it could only prove that the court of king's bench was wrong in sending down the proceedings had thereon; but as the court had sent these proceedings down, and it appeared from thence to their lordships that the prisoners had pleaded to the indictment, they thought themselves bound to take notice of that plea, and to refuse the motion.

Mr. Rolleston then moved "that the prisoner be permitted to withdraw his plea, put it in the court of king's bench, and to plead *de novo*." He observed, that this was an application to the discretion of the court; but that he would show, from decided authorities, in England as well as in Ireland, that it was a motion uniformly complied with in similar circumstances. He then cited the case of *The King v. The Dean of St. Asaph*, where the indictment having been removed by *certiorari*, the prisoner pleaded *de novo* in the court of king's bench. So in the case of *The King v. Agolet*, and *The King v. Ward*, which cases, he said, were noticed in a celebrated case in this country, the case of *Mr. Keon*, who was indicted and convicted, some years ago, for murder.

Mr. Schoales followed, and, in addition to the cases cited by his learned colleague, referred the court to authorities in *Carthew*, p. 6. *The King v. Baker*, and *The King v. Carpenter*,

in 4 Viner's Abridgment, in both which cases the prisoner had been allowed to plead *de novo*. He said there was a circumstance in this case in favour of the application, which he did not find in any of the other cases, and which he hoped would decide the court in the exercise of its discretion; it was this :—that at the time the present indictment was found against the prisoner, at the assises of Lifford, he was a prisoner in the gaol of Kilmainham, and had, of course, no opportunity of knowing whether the bill of indictment had been found against him in a legal and regular manner, or whether there might not have been some proceedings that were informal, and of which he would have had a right to avail himself if he had been informed of them.

Mr. Justice Chamberlaine said he would be sorry any information would be sent abroad, that the prisoner had not had every advantage which by law he was entitled to.

Mr. Schoales (after a few minutes' conversation with Mr. Tandy, who was placed immediately behind his counsel) desired leave to say, lest, from a misunderstanding of the object of his argument, any such idea should arise amongst the numerous audience, as that which the court had hinted at, that he had instructions from his client to say, and wished also for himself and for the gentlemen concerned with him, to say, that no insinuation was intended; that, on the contrary, he had himself an opportunity of knowing, and his client was fully sensible, that throughout the whole prosecution, he had experienced from the Right Hon. Gentleman who conducted it, every indulgence which his situation admitted, and every attention which politeness or humanity could suggest.

Mr. Attorney-General said, that, in affording to the prisoner every indulgence which was consistent with his unfortunate situation, he was guided not more by inclination than by duty; a duty which he felt he owed to every person whose prosecution he was obliged to conduct, be his situation in society high or low, and which, he trusted, he would never forget. He then argued upon the motion, that some ground should

have been laid beyond mere allegation, in order to induce the court to exercise its discretion in the prisoner's favour.

The court said, that if it appeared to them that any substantial advantage could be derived to the prisoner from their granting this motion, they would comply with it; but none such had been pointed out to them; and, therefore, they felt themselves bound not to retard the course of justice by complying with it.

The prisoner's counsel then stated, that they had affidavits of the want of a material witness, on which they moved to put off the trial to the next assises. Three affidavits were read, but they not containing matter sufficient enough to satisfy the court, this motion was also refused.

The sheriff was then directed to return a jury; and, while the panel was calling over, Mr. Tandy held a short conference with his counsel, and with his son, James Tandy, and another gentleman, a near relation, who attended him at the bar during the whole proceedings.

Mr. Tandy then expressed a desire to be heard, and silence having been commanded, he spoke nearly as follows, in a manner at once firm and respectful.

"My lords,

"It is not my intention to give any further trouble to your lordships, on this occasion; I am sorry your lordships have had so much. I am happy in having an opportunity of returning my acknowledgments to the Attorney-General throughout this proceeding; in the discharge of the duties of his office, he has never forgotten the feelings of a man.

"My lords, I have read the copy of the indictment with which I was served in the gaol of Kilmainham; I admit that the facts contained in it are true, and have no doubt can be proved: why then should I put your lordships and the court to the trouble of going through the form of a trial? of course, I desire to plead guilty to the indictment."

Mr. Justice Chamberlaine, after a short pause, addressed Mr. Tandy, as follows :

"Prisoner at the bar,

"It is the duty of the court to apprise you of the consequence of the application which you have made : by pleading guilty, you must consider your life as forfeit: you have had able men assigned you as counsel; confer with them, and weigh this matter well before you determine.

Mr. Tandy immediately replied,

"My lords, I had mentioned my design to my counsel, before I made my application to your lordships; I know they are men of integrity and ability, and I am obliged to them for their exertions. What they could do they have done; but I feel it would be unable for the highest talents on earth to prevent the facts with which I am charged from being proved, and my love of truth will not allow me now to persevere in that which I know to be a falsehood. My lords, I am fully apprized of the nature of that awful sentence which must be pronounced against me; but I confide in the justice of my cause, and trust I shall meet my fate with the fortitude of a man!"

The indictment was then read at length, and the prisoner having pleaded guilty, Mr. Justice Chamberlaine, after a short but affecting address, pronounced the sentence of the law.

Mr. Tandy was condemned to die, but, to the astonishment of the public, he was not executed, and was respited from week to week. This requires some explanation. The memorable battle of Marengo had changed, in one day, the political system of Europe, and Bonaparte became the principal figure on that interesting stage. By what may be gathered from Mr. Curran's speech, and what every reader of newspapers may recollect, the manner in which Mr. Tandy was arrested at Hamburgh must be well known. The whole world exclaimed at the late infraction of neutral territory in the seizure of the unfortunate Duke d'Enghien. But part

of the world is inclined to forget that the English ministry had set a previous example in the violent and illegal seizure of Mr. Tandy, merely for the pleasure of hanging him—and hanged he would have been but for the powerful interference of the chief consul,* who threatened to retaliate in case of execution. The English ministers were in a most perplexing quandary, and now wished most earnestly that they never had seized him. They shifted and covered the thing as well as they could. One day they told Mr. Tandy that he would be hanged immediately—the next that he was to be transported to Botany Bay. At length he was informed (negotiations for peace being in great forwardness) “that he had permission to reside in any part of the world he pleased, except in his majesty’s dominions;” and it was requested that Mr. Tandy’s friends might not make any public exultation *in delicacy to Lord Hardwicke!* He was taken by night from Lifford, and conveyed through the most unfrequented roads to Wicklow, where he was embarked for France, and where he arrived in safety, on the 14th of March, 1802. After a very busy political life of 72 years, he died quietly in his bed at Bordeaux, and was buried with military honours.

* Besides the delivery of Mr. Tandy from death, the chief consul—let us do him justice—redeemed M. la Fayette and his family from the dungeons of Austria, a transaction which will reflect eternal infamy on the combined kings and their infamous agents.

THE TRIAL

OF JAMES O'BRIEN, FOR WILFUL MURDER.

COMMISSION COURT,

HELD before Lord Yelverton and Mr. Justice Day, came on the trial of James O'Brien, for the wilful murder of John Hoey.*

Mr. CURRAN, counsel for the prosecution, stated the case. He observed, it was not the ordinary custom for the gentlemen of the bar, when prosecuting a man in a case that turned upon the question of life and death, to press many observations either on the court or the jury, in order to make any unfair lodgment on the minds of the jury, in order, if it was possible, to excite any anticipated sentiment unfavourable to the prisoner. He would be the more cautious in any observation he should make, because, on matter of fact, the prisoner had not the same privilege the prosecutor had; and because the wisdom and humanity of the law has established, that, with respect to a prisoner on the trial of his life, the evidence of criminality must be so plain and clear, as that no argument or evidence produced by the defendant could by possibility shake it; but the humanity of the law has also given to the prisoner a great advantage indeed, and that was the solemn and awful duty that was imposed upon

* We insert this trial merely to show the miserable fate of an *informant*. Most of these wretched men have disappeared, or are gone to foreign countries, wandering under borrowed names.

the judges, not to be his advocate, but certainly to be his counsel.

The prisoner at the bar stood indicted for the wilful and deliberate murder of a fellow creature, which, by the laws of all countries, and the ordinances of every nation, barbarous or civilized, has this positive and recorded principle, that, "whoever shall shed man's blood, by man shall his blood be shed." When God gave life to man, he imposed it as a duty on him to protect that life he intrusted him with, until it was the will of him that gave it to take it away; and society, when it instituted the severe law of capital punishment on the head of the deliberate and wilful murderer, did only carry the commands of God into effect, through the medium of the municipal law.

It would be necessary for the jury to carry in their minds, that though it is found necessary to remove the murderer from the earth, yet every man that lifted his hand against his fellow man, even though life should be terminated by the blow, is not called murderer by the law, nor does the law consider him as such; for, as the most enlightened and humane judge that ever wrote or thought upon the subject (Judge Foster) has declared, it might be attended with a depravity bent on mischief. To bring a man within the meaning of the law, it must be the cool and deliberate taking away the life of a fellow creature, attended by such circumstances as take away from the murderer all plea of self-defence—because the law does allow that sort of proof for a prisoner, and does lean towards the infirmity and frailty of human nature. The jury ought to recollect that the prisoner was but a man—they ought to recollect that themselves were but men—and the judges would recollect that they were but men, sitting in judgment on their fellow man.

Mr. Curran then said, it would not be necessary minutely to state the evidence intended to be produced, but merely so much as would enable the jury to understand the nature of

the case ; it would, therefore, be necessary for him to depart from the general rule, and make a few observations.

The present trial was considered abroad as of some expectation. He very well knew, that whenever a judicial inquiry became the topic of public and general conversation, that every conversation was in itself a little trial of the fact. The voice of public fame, the falsest witness that ever was sworn or unsworn, is always ready to bear testimony to the prejudice of an individual; the mind becomes heated, and it can scarcely be expected, even in a jury-box, to find a cool, and reflecting, and uninterested mind. There are two tribunals to which every man must be amenable—the one a municipal tribunal, the other the great, and general, and despotic tribunal of public reputation. If the jury had any reason to suppose that any man that came before them had been already tried by public fame, and condemned, he begged to remind the jury of the solemn duty that justice imposed on them, to turn their eyes away from the recollection that any sentence of that sort of condemnation had been pronounced by the voice of public reputation ; and if they thought that his character had sunk under such a sentence, he would remind the jury, that the infamy of such a condemnation was enough, without their taking it into their consideration ; it was the duty of the jury to leave the decrees of that court of public reputation to be executed by its own authority, for they had no right to pass sentence of condemnation on any man because that prejudging court might have passed sentence on his character ; they ought to reflect, that the evidence given before that court was unsworn, that there was no deposition of any witnesses upon oath, and, therefore, they were bound to consider the evidence before them naked and simple, as if they had never heard the name of the man they were to try, and the sentence of condemnation that public fame had pronounced on his character. There was but one point of view in which public character ought to be taken, and that was, if there was doubt : in such a case, general good character

ought to have great weight, and go towards the acquittal of the accused; but, should it so happen, that general bad character should be thrown into the scale, it ought not to have one twentieth part of the weight that good character should have.

The jury, he was satisfied, would deliberately and cautiously weigh the evidence to be produced; and they would be perfectly satisfied in their minds of the guilt of the prisoner, and they must feel an irresistible and coercive force acting on them from the weight of the evidence, before, by their verdict, they pronounce that melancholy sentence that would remove a murderer from the face of the earth.

EVIDENCE AGAINST THE PRISONER.

Mrs. Anne Hoey swore that the deceased was her husband—that previously to the unfortunate affair in question, he was in a very bad state of health, being confined to the house, taking medicines, and subject to a variety of complaints whereby he became very weak; and the witness particularly deposed that he was rendered almost blind, and had been obliged, shortly before he was killed, to have five blisters on him, and an issue in his arm—that he walked on the evening above stated, to take the air, after which the witness never beheld him, until she saw him dead in Madam Stephen's hospital.

Surgeon Colles is resident surgeon at Stephen's hospital—he deposed that the body of the deceased, having been taken on the evening aforesaid to his hospital, he did, on the following day, surgically examine it, in order to discover what were the wounds, and found that the man had received a stab with some two-edged weapon, in the left side—the wound went five inches into the body and penetrated the heart.

A. Downey was in the field on the evening of the 4th May, 1798—saw the deceased standing near the wall of the field, peaceably and quietly, detached from a great number

of persons playing at foot-ball and wrestling—heard a cry off *here is O'Brien the informer,** and saw the prisoner and two invalids come over the wall; upon which the mob in the field immediately ran away—that as soon as the prisoner got into the field, he ran at the deceased and gave him a kick and a blow—that the deceased retreated sideways, and whilst retreating, the witness saw the prisoner take a dagger from under his coat, with which he stabbed the deceased, who instantly fell—that the prisoner immediately ran away a few paces, and then returned and raised the hand of the deceased, which, when he let go, fell to the ground; that he then examined the deceased's coat where the wound was, and immediately ran off—that the deceased did not in any manner assault or raise his hand against the prisoner; he might have said something to him without the witness hearing it, but he could not do any thing without the witness seeing it—the deceased was by no means one of the crowd that was playing, but seemed merely a spectator, and in a very sickly state of body.

Lawrence Beaghan corroborated minutely the examination of the witness Downey. He was cross-examined by Mr. Greene, and acknowledged that the crowd was very great, upwards of a thousand persons.

Exculpatory evidence was produced in favour of the prisoner, to show, that as the assembly of the people was supposed to be of a seditious nature, Alderman Manders and Major Sirr posted soldiers at the entrance of the field to arrest suspected persons, and that two were taken into custody. It was also endeavoured to be shown, that O'Brien was occasionally deranged—to corroborate which, two invalid soldiers were examined.

Mr. McNally, as counsel for the prosecution, recalled the witness Downey, in order to invalidate the evidence of the two invalid soldiers. The witness positively swore that the deceased, after he was assaulted by the prisoner, was in the act of retreating as fast as in all appearance he could, when

* See Finney's Trial.

the prisoner stabbed him. He, the witness, on looking back, and seeing the man fall, was proceeding to return and take him from the ground, but one of the invalid soldiers refused to let him approach for some time. The witness said, "the man is murdered!"—"If he is murdered (said the invalid soldier,) it was not we, but the man in coloured clothes that murdered him."

The evidence being closed on both sides, the Hon. Justice Day proceeded to charge the jury. The learned judge strictly recapitulated the evidence, dwelt with force and precision on the leading circumstances of the case, and then ably laid down the points of law.

It was his duty to tell the gentlemen of the jury, that any provocation that could be given by an unarmed person on the occasion, could not justify the prisoner to take away his life. Such was the law that made allowance for human frailty, were even the evidence of the invalid admitted, between which, and the evidence of Downey and Beaghan, there appeared a contradiction, on which, the only difficulty of decision, respecting the fact, hinged. If Downey's deposition gained full credit, the prisoner's case must be considered attended with inhuman aggravation, as thereby it appeared the unfortunate man was killed in retreating. Where thus the evidence on both sides was at an issue, the learned judge, after duly commenting on the circumstances and contradistinguished clashing testimony, recommended to the jury to give each whatever weight in their consciences, on serious inquiry, it could be found to deserve—and it might be, at the same time, not improper to reflect, that the prisoner, from the nature of his employment, became much obnoxious. If public odium influenced any attack on him in the unfortunate affray, the jury would do well to investigate how far, and if they conceived his case deserving any consideration on that ground, they were bound, no doubt, to give it—but his lordship here again took the law distinction, that such provoca-

tion, were it given, could not be received as a plea to 'set off the prisoner's crime.

The jury, without leaving the box, found the prisoner **GUILTY.**

On which Mr. Justice Day, with impressive and pathetic solemnity, passed sentence of death on the culprit. The learned justice observed, on the awful occasion, that if murder admitted of aggravation, the felon's crime, which had been clearly established in evidence to the full satisfaction of the court and jury, was aggravated with the most unprovoked, wanton and savage cruelty; he murdered an inoffensive, infirm, and defenceless man; a man with whom it is probable he had no previous intercourse, and, in consequence, against whom he could harbour no particular malice—but it was therefore substantiated that he cherished malice prepense against mankind in general, whence he became a member unfit for society, for whose sake he must be made an ignominious, a disgraceful sacrifice!—his fate was inevitable! The law gave him but forty-eight hours before his being called to answer for his crimes at an Eternal Bar, where the deepest previous penitence alone could operate as atonement, and where, therefore, the learned judge hoped, he would endeavour, by using every intermediate moment in contrition and devotion, to prepare himself to appear in the presence of the Searcher of Hearts.

The learned justice then sentenced him to be executed on Monday next, and ordered his body to be delivered to the sheriffs of the city, for dissection in Surgeons' Hall.

On Monday James O'Brien, pursuant to his sentence, was executed in front of the new prison, Green-street. The concourse of spectators attracted by the awful scene, was such as we never before witnessed on a like occasion, not only in point of numbers, but in point of conduct; public execration

could scarcely be carried farther in its expression, and the most senseless and abandoned creature that mixed in the rejoicing crowd, must have drawn some instruction from the scene before him, and involuntarily have prayed the Almighty "that his latter end should not be like unto that of this man."

The body was literally torn to pieces by the mob before it reached Surgeons' Hall!

His crime was great, and his punishment just—but although it may have been the tribute of abhorrence which nature bestows on the foul deed of the murderer, yet we could have wished that there had been less joy expressed on the occasion. No doubt the public exultation was just, and it was fitting that such a wretch should not be among men—but although just, it shocks the civilized mind to see a multitude of human beings raise a cry of delight at the death of a fellow creature, and posthumous hatred or vengeance are not reconcilable to morality or religion. This, however, though shocking, is instructive, and not without its beneficial influence on the state of society; there are men who can brave the pangs of death and those of living shame, but cannot bear that their last moments, though ignominious, should elicit from the breast of a fellow creature no spark of pity—who cannot bear the idea of a community rejoicing in their death, and finding no monument but the public odium—no epitaph but the public curse. On such minds the scene of Monday must have had considerable influence; and thus, though frightful and disgusting, must have been useful. It will teach them, even without looking forward to Divine Justice, that within this earthly pale, death is not the end of punishment, and although privation of life may satisfy the sentence of the law, the sentence of public feeling and opinion heaps execration on his unburied corpse, and follows him from the gallows to the gibbet—attends him even beneath the surgeon's knife!

COURT OF KING'S BENCH.

JOHN HEVEY AGAINST CHARLES H. SIRR, ON AN ACTION
FOR AN ASSAULT AND FALSE IMPRISONMENT.

MONDAY, 17th MAY, 1802.

MR. CURRAN stated the case for the plaintiff. He began by telling the jury, it was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the plaintiff, if he has brought it wantonly, or the most unparalleled miscreancy in the defendant, if it shall appear supported by proof. And the event must stamp the most condign and indelible disgrace on the guilty defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record, the action, he said, appeared short and simple; it was an action of trespass *vi et armis*, for an assault, battery, and false imprisonment. But the facts that led to it, that explain its nature and its enormity, and, of course, that should measure the damages, were neither short nor simple—the novelty of them might surprise, the atrocity must shock their feelings, if they had feelings to be shocked—but, he said, he did not mean to address himself to any of their proud feelings of liberty. The season for that was past.

There was indeed, he said, a time when, in addressing a jury upon very inferior violations of human rights, he had felt his bosom glow, and swell with the noble and elevating consciousness of being a free man, speaking to free men, and in a free country; where, if he was not able to communicate

the generous flame to their bosoms, he was at least not so cold as not to catch it from them. But that was a sympathy which he was not now so foolish either to affect to inspire, or participate. He would not insult them by the bitter mockery of such an affectation; buried as they were, he did not wish to conjure up the shades of departed freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a mischievous profanation to use her language; because it tends to deceive the man who is no longer free, upon the most important of all points; that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words, with the real possession of freedom. He meant not, therefore, he said, to call for a haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of independence. Far from it, he only asked for such a verdict as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public and general destiny.

For this purpose, he said, he must carry back their attention to the melancholy period of 1798. It was at that sad crisis that the defendant, from an obscure individual, started into notice and consequence. It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured. From being a town major, a name scarcely legible in the list of public encumbrances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up to his disposal. With this gentleman's extraordinary elevation, began the story of the sufferings and ruin of the plaintiff. It seems, a man of the name of M^r Guire, was prosecuted for some offence against the state. Mr. Hevey, the plaintiff, by accident, was in court; he was then a citizen of wealth and credit, a brewer in the first line of that business. Unfortunately for him, he had heretofore employed the witness for the prosecution, and found him a

man of infamous character—unfortunately for himself, he mentioned this circumstance in court. The counsel for the prisoner insisted on his being sworn; he was so. The jury were convinced that no credit was due to the witness for the crown; and the prisoner was accordingly acquitted. In a day or two after, Major Sirr met the plaintiff in the street, asked how he dared to interfere in *his* business, and swore by God “he would teach him how to meddle with *his* people.”

Gentlemen, said Mr. Curran, there are two sorts of prophets, one that derives its source from real or fancied inspiration, and who are sometimes mistaken. But there is another class who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the *major*; for Heaven, you see, has no monopoly of prediction. On the following evening, poor Hevey was dogged in the dark into some lonely alley; there he was seized, he knew not by whom, nor by what authority—and became, in a moment, to himself, to his family and his friends, as if he had never been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason which he had committed against *the majesty of Major Sirr!* He was immediately conducted to a new place of imprisonment in the castle yard, called the provost. Of this mansion of misery, of which you have since heard so much, *Major Sandys* was, and I believe yet is, the keeper; a gentleman of whom I know how dangerous it is to speak, and of whom every prudent man will think and talk with all due reverence. He seemed a twin star of the defendant—equal in honour and confidence, equal also (for who could be superior?) in probity and humanity. To this gentleman was my client consigned, and in his custody he remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried is as profound as the oblivion of the dead; his family may have mourned his absence, or his probable death, but why should

I mention so paltry a circumstance? The fears or the sorrows of the wretched give no interruption to the general progress of things. The sun rose and the sun set, just as it did before—the business of the government, the business of the castle, of the feast or of the torture, went on with their usual exactness and tranquillity.

At length Mr. Hevey was discovered among the sweepings of the prison, and was at last to be disposed of. *He was honoured with the personal notice of Major Sandys!* "Hevey," says the major, "I have seen you ride a smart sort of a mare; you can't use her here; you had better give me an order for her." The plaintiff, you may well suppose, by this time, had a tolerable idea of his situation; he thought he might have much to fear from a refusal, and something to hope from a compliance; at all events he saw it would be a means of apprizing his family that he was not dead. He instantly gave the order required. The major graciously accepted it, saying, "your courtesy will not cost you much; you are to be sent down to-morrow to Kilkenny to be tried for your life; you will most certainly be hanged; and you can scarcely think that your journey to the other world will be performed on horseback." The humane and honourable major was equally a prophet with his compeer. The plaintiff on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to Kilkenny, then the head-quarters of Sir Charles Asgill,* there to be tried by a court-martial for such crimes as might chance to be alleged against him.

In any other country, the scene that took place on that occasion might excite no little horror and astonishment; but with us, these sensations are extinguished by constant repetition. I am instructed, that a proclamation was sent forth, offering a reward to any man, who would come forward and

* The same personage who once made a figure in this country. If we believe the melancholy history of the Irish rebellion, the mercy that was shown to him in America he did not show to others in Ireland.

give any evidence against the traitor Hevey. An unhappy wretch who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long between the alternative proposed; pardon, favour, and reward, with perjury on one side, the rope and the gibbet on other. His *loyalty* decided the question against his soul. He was examined, and Hevey was appointed, by the sentence of a *mild*, and, no doubt, *enlightened* court-martial, to take the place of the witness, and succeed to the vacant halter.

Hévey, you may suppose, now thought his labours at an end, but he was mistaken; his hour was not yet come. You, gentlemen, or you, my lord, are probably accounting for his escape, by the fortunate recollection of some early circumstances, that might have smote upon the sensibility of Sir Charles Asgill, and made him believe that he was in debt to Providence for the life of one innocent, though a convicted victim. But it was not so; his escape was purely accidental. The proceedings upon his trial happened to meet the eye of Lord Cornwallis. The freaks of fortune are not always cruel—in the bitterness of her jocularity, you see she can adorn the miscreancy of the slave in the trappings of power, and rank, and wealth. But her playfulness is not always inhuman; she will sometimes, in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it only, that she might afterwards reassign him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration. Lord Cornwallis read the transmiss of Hevey's condemnation; his heart recoiled from the detail of stupidity and barbarity. He dashed his pen across the odious record, and ordered that Hevey should be forthwith liberated. I cannot but highly honour him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that

court with that vigour and indignation, which he has since shown with respect to those abominable jurisdictions.

Hevey was now a man again; he shook the dust off his feet against his prison gate; his heart beat the response to the anticipated embraces of his family and his friends, and he returned to Dublin. On his arrival here, one of the first persons he met was his old friend, Major Sandys. In the eye of poor Hevey, justice and humanity had shorn the *major* of his beams; he no longer regarded him with respect or terror. He demanded his mare; observing, though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journeys on horseback. "*Ungrateful villain, (said the major,) is this the gratitude you show to me and to his majesty for our clemency to you ? You shan't get possession of the beast, which you have forfeited by your treason, nor can I suppose that a noble animal that had been honoured with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor.*" As to the *major*, (said Mr. Currán,) I am not surprised that he spoke and acted as he did. He was, no doubt, astonished at the impudence and novelty of calling the privileges of official plunder into question. Hardened by the numberless instances of unpunished acquisition, he had erected the frequency of impunity into a warrant of spoil and rapine. One of these instances, I feel, I am now bringing to the memory of your lordship.

A learned and respected brother barrister had a silver cup; the *major* heard, that for many years it had borne an inscription of "ERIN GO BRAGH," which means, "*Ireland for ever.*" The *major* considered this perseverance in guilt for such a length of years as a forfeiture of the delinquent vessel. My poor friend was, therefore, robbed of his cup; but, upon writing to the then Attorney-General, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base, and the *major's* *loyal* sideboard was condemned to the grief of restitution. And here (said Mr.

Curran) let me say, in my own defence, that this is the only occasion upon which I have mentioned this circumstance with the least appearance of lightness. I have told the story in a way that it would not become me to tell it here. I have told it in the spirit of those feelings which were excited at seeing that one man could be sober and humane at a crisis when so many thousands were drunk and barbarous. And probably my statement was not stinted by the recollection that I held that person in peculiar respect and regard. But little does it signify whether acts of moderation and humanity are blazoned by gratitude, by flattery, or by friendship; they are recorded in the heart from which they sprung; and in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory, and precious is the balm of their consolation. But to return—

Hevey brought an action for his mare. The major not choosing to come into court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of suit, to the attorney of Mr. Hevey. It may, perhaps, strike you, my lord, (said Mr. Curran,) as if I was stating what was irrelevant to the action. It is materially pertinent; I am stating a system of concerted vengeance and oppression. These two men acted in concert—they were Archer and Aimwell. You master at Litchfield, and I at Coventry. You plunderer in the gaol, and I tyrant in the street; and, in our respective stations, we will coöperate in the common cause of robbery and vengeance. And I state this, because I see Major Sandys in court—and because I feel I can prove the fact beyond the possibility of denial. If he does not dare to appear, so called upon as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath; or, if he ventures to deny a syllable that I have stated, I will prove it by irrefragable evidence of record, that his denial is false and perjured.

Thus far, gentlemen, we have traced the plaintiff through the strange vicissitudes of barbarous imprisonment, of atro-

cious condemnation, and of accidental deliverance. Here Mr Curran described the feelings of Hevey and his family, upon his restoration—his difficulties on his return—his struggles against the aspersions on his character—his renewed industry—his gradual success—the implacable malice of Sirr and Sandys—and the immediate cause of the present action. Three years (says Mr. Curran) had elapsed since the deliverance of my client—the public atmosphere had cleared—the private destiny of Hevey seemed to have brightened—but the malice of his enemies had not been appeased. On the 8th of September last, Mr. Hevey was sitting in a public coffee-house—Major Sirr was there. Mr. Hevey was informed that the major had, at that moment, said, that he (Hevey) ought to have been hanged. The plaintiff was fired at the charge—he fixed his eye on Sirr, and asked if he had dared to say so. Sirr declared that he had, and had said truly. Hevey answered, that he was a slanderous scoundrel. At the instant Sirr rushed upon him, and, assisted by three or four of his satellites, who had attended him in disguise, secured him, and sent him to the castle-guard, desiring that a receipt might be given for the villain. He was sent thither. The officer of the guard chanced to be an Englishman, but newly arrived in Ireland; he said to the bailiffs, “If this was in England, I should think this gentleman entitled to bail; but I don’t know the laws of *this* country. However, I think you had better loosen those irons on his wrists, or I think they may kill him.”

Major Sirr, the defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which Mr. Hevey was conveyed to the custody of his old friend and gaoler, Major Sandys. Here he was flung into a room of about 14 by 12—it was called the *hospital of the provost*. It was occupied by six beds, in which were to lie 14 or 15 miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed

to him a view of his sad fellow-sufferers, for whose loathsome society he was, once more, to exchange the cheerful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt which he had dared to show to the overweening and felonious arrogance of slaves in office, and minions in authority. Here he passed the first night without bed or food. The next morning his humane keeper the major appeared. The plaintiff demanded "why he was imprisoned," complained of hunger, and asked for the gaol allowance. Major Sandys replied with a torrent of abuse, which he concluded by saying—"Your crime is your insolence to Major Sirr; however, he disdains to trample upon you—you may appease him by *proper* and *contrite* submission; but, unless you do so, you shall rot where you are. I tell you this, that if government do not protect *us*, by God we will not protect *them*!—You will, probably, (for I know your insolent and ungrateful hardness,) attempt to get out by a *habeas corpus*; but in that you will find yourself mistaken, as such a rascal deserves." Hevey was insolent enough to issue a *habeas corpus*, and a return was made upon it, "that Hevey was in custody under a warrant from General Craig, on a charge of treason." That this return was a gross falsehood, fabricated by Sirr, I am instructed to assert. Let him prove the truth of it if he can. The judge before whom this return was brought, felt that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and audacious lie, my client was again remanded to the horrid mansion of pestilence and famine!

Mr. Curran proceeded to describe the feelings of Mr. Hevey—the despair of his friends—the ruin of his affairs—the insolence of Sandys—his offer to set him at large, on condition of making an abject submission to Sirr—the indignant rejection of Hevey—the supplication of his father and sister, rather to submit to an enemy, however base and odious, than perish in such a situation—the repugnance of Hevey—the repetition of kind remonstrances, and the final submission to

their entreaties—his signing a submission, dictated by Sandys, and his enlargement from confinement. Thus (said Mr. Curran) was he kicked from his gaol into the common mass of his fellow slaves, by yielding to the tender entreaties of the kindred that loved him, to sign what was, in fact, a release of his claim to the common rights of a human creature, by humbling himself to the brutal arrogance of a pampered slave—But he did suffer the dignity of his nature to be subdued by its kindness—he has been enlarged, and he has brought the present action.

As to the facts that had been stated, Mr. Curran said, he would make a few observations. It might be said for the defendant, that much of what was stated may not appear in proof. He would not have so stated the case, if he had not seen Major Sandys in court; he had, therefore, put the facts against him in a way which he thought the most likely to rouse him to a defence of his own character, if he dared to be examined as a witness. He had, he trusted, made him feel that he had no way of escaping universal detestation, but by denying those charges, if they were false; and if they were not denied, being thus publicly asserted, his entire case was admitted—his original oppression in the provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie he so audaciously forged on the *habeas corpus* was admitted—the extortion of the infamous apology was admitted. Again, I challenge this worthy compeer of a worthy compeer, to make his election, between proving his guilt by his own corporal oath, or by the more credible modesty of his silence.

And now (said Mr. Curran) I have given you a sketch of this extraordinary history. No country, governed by any settled law, or treated with common humanity, could furnish any occurrences of such unparalleled atrocity; and if the author of Caleb Williams, or of the Simple Story, were to read the tale of this man's sufferings, it might humble the vanity of their talents (if they are not too proud to be vain) when they

saw how much a more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles, to madness and to death.

And now, said Mr. Curran, I feel a sort of melancholy pleasure in getting rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the plaintiff to be as I have stated. I told you before that neither pride nor spirit belonged to our situation; I should be sorry to inflame you into an apish affectation of the port and stature of freedom or independence. But my advice to you is, to give the full amount of the damages laid in the declaration, and I'll tell you why I give you that advice: I think no damages could be excessive, either as a compensation for the injury of the plaintiff, or as a punishment of the savage barbarity of the defendant; but my reasons for giving you this advice lie much deeper than such considerations; they spring from a view of our present most forlorn and disastrous situation. You are now in the hands of another country; that country has no means of knowing your real condition, except from the information that she may accidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity which we have witnessed, as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing what was openly proved in a court of justice. Mr. Curran here made some pointed observations on the state of a country where the freedom of the press is extinguished, and where another nation, by whose indolent mercy, or whose instigated fury, we may be spared, or sacrificed, can know nothing of the extent of our sufferings, or our delinquency, but by casual hearsay.

I know, said he, that those philosophers have been abused, who think that men are born in a state of war. I confess I go further, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it—when I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes, with the still greater enormity of their punishments, I retain no doubt upon the subject. But if I could hesitate as to men in the same community, I have no doubt of the inextinguishable malignity that will for ever inflame nation against nation. Well was it said, that “a nation has no heart;” towards each other they are uniformly envious, vindictive, oppressive, and unjust. What did Spain feel for the murders or the robberies of the west? nothing. And yet at that time she prided herself as much as England ever did on the elevation of her sentiment, and the refinement of her morality. Yet what an odious spectacle did she exhibit? Her bosom burning with all the fury of rapine and tyranny; her mouth full of the pious praises of the living God, and her hands red with the blood of his innocent creatures.* When I advise you, therefore, to mark your feelings of the case before you, don’t think I mean that you could make any general impression on the morality or tenderness of the country *whose property we are become*. I am not so foolish as to hope any such effect; practicable justice and humanity are virtues that require laborious acts and mortifying privations; expect not therefore to find them; appeal not to them. But there are principles and feelings substituted in their place, a stupid preference and admiration of self, an affectation of humanity, and a fondness for unmerited praise; these

* Mr. Curran might easily have extended his examples to a much greater length—history, alas, is full of them! Why overlook the continued murders and robberies in the East as well as in the West?—and we all remember the horrible butcheries of Ismail and Praga by the *immortal* Suwarrow!

you had, for they cost you nothing ; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments and abettors of such deeds. An Irish lord lieutenant will shrink from the imputation of countenancing them. England will see that it is not her interest to encourage an infernal spirit of subaltern barbarity, that reduces man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments as the present defendant. When the government of Ireland lately gave up the noted O'Brien to the hands of the executioner, I have no little reason to believe that they suffered as they deserved on the occasion. I have no doubt, but that your verdict of this day, if you act as you ought to do, will produce a similar effect. And, as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When the torture was the daily and ordinary system of our executive government, it was denied in London with a profligacy of effrontery equal to the barbarity with which it was exhibited in Dublin ; and, if the facts that shall appear to-day should be told on the other side of the water, I make no doubt but very near five hundred worthy persons would be ready to deny their existence upon their *honour*, or, if necessary, upon their *oaths* !

I cannot also but observe to you (continued Mr. Curran) that the real state of one country is more forcibly impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a number of barbarians, practising a great variety of cruelties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart, nor is any sentiment excited, save that of a general, erratic, unappropriated commiseration. If, for instance you wished to convey to the mind of an English matron the horrors of that direful period, when, in defiance of

the remonstrance of the ever to be lamented **ABERCROMBIE**,* our poor people were surrendered to the licentious brutality of the soldiery, *by the authority of the state*, you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry wishes to portray the movements of contending armies, and an embattled field, he exemplifies only, he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts; but by the acts and feats of a few individuals, he conveys a notion of the vicissitudes of the fight and fortune of the day. So should your story to her keep clear of generalities; instead of exhibiting the picture of an entire province, select a single object; and even if that single object do not release the imagination of your hearer from its task by giving more than an outline, take a cottage; place the affrighted mother of her orphan daughters at the door, the paleness of death upon her face, and more than its agonies in her heart; her aching eye, her anxious ear, struggling through the mists of closing day, to catch the approaches of desolation and dishonour. The ruffian gang arrives, the feast of plunder begins, the cup of madness kindles in its circulation. The wandering glances of the ravisher become concentrated upon the shrinking and devoted victim. You need not dilate, you need not expatiate; the unpolluted mother to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart, she drowns it in her tears; her fancy catches more than an angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you. No, gentlemen, far from

* See Historical Sketch.

it; he will have too much common sense not to know that outrages like this are never solitary; that where the public calamity generates imps like these, their number is as the sands of the sea, and their fury as insatiable as its waves. I am therefore anxious that our *masters* should have one authenticated example of the treatment which our unhappy country suffers under the sanction of *their* authority; it will put a strong question to their humanity, if they have any, to their prudence, if their pride will let them listen to it; or, at least, to that anxiety for reputation, to that pretension to the imaginary virtues of mildness and mercy, to which even those countries the most devastated of them are so ready to assert their claim, and so credulously disposed to believe that claim allowed.

There are some considerations respecting yourselves and the defendant, to which I would wish to say a word. You perhaps may think your persons unsafe, if you find a verdict against so considerable a person. I know his power as well as you do; I know he might send you to the *provost* as he has done the plaintiff, and forge a return on any writ you might issue for your deliverance—I know there is no spot in this devoted nation (except this on which we now are) where the story of oppression can be told or heard; but I think you can have no well founded apprehensions. There is a time when cruelty and oppression become satiated and fatigued; in that satiety, at least, you will find yourselves secure.

But there is still a better security for you; the gratitude of the worthy defendant. If any thing could add to his honours, and his credit, and his claims, it would be your verdict for the plaintiff; for in what instance have you ever seen any man so accredited and recommended as by the public execration? What a man, for instance, might not O'Brien have been, if the envy of the gibbet had not arrested the career of his honours and preferments! In every point of view, therefore, I recommend to you to find, and to find liberally, for the plaintiff. I have founded my advice upon

the real circumstances of your situation ; I have not endeavoured to stimulate you into any silly hectic of fancied liberty—I do not call upon you to expose yourselves by any affectation of vindicating the cause of freedom and humanity ; much less do I wish to exhibit ourselves to those whose property we are, as indignant or contumacious under their authority—far from it ; they are unquestionably the proprietors of us—they are entitled to drive us, and to work us ; but we may be permitted modestly to suggest, that, for their own sakes, and for their own interests, a line of moderation may be drawn, and that there are excesses of infliction which human nature cannot bear. With respect to her Western negroes, England has had the wisdom and humanity to feel the justice of this observation, and in some degree to act upon it ; and I have too high an opinion of that great and philosophical nation, not to hope that she may think us not undeserving of equal mildness ; provided it did not interfere with her just authority over us. It would, I should even think, be for her credit, that having the honour of so illustrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained, if she suffers us to be utterly broken down by the malicious wantonness of her grooms and jockeys.

Mr. Curran concluded by saying, that the cause was of no inconsiderable expectation, and that, in whatever light the jury regarded it, whether with respect to the two countries, or to Ireland singly, or to the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event, they ought to consider it with the most profound attention, before they agreed upon their verdict.

Mr. Molloy examined by Mr. M^r. Nally.

Q. Do you know Major Sirr?—A. I do.

Q. Do you know Mr. John Hevey?—A. Yes.

Q. Do you recollect being in the commercial buildings last September?

A. I do; there was some conversation between Major Sirr and Mr. Hevey on the evening of the 8th of September. Mr. Sirr said to the plaintiff, " You ought to be hanged!" On which Mr. Hevey said, " You lie, but you ought to be hanged!" I then saw Mr. Sirr come over from the place he was sitting in, and took hold of Hevey by the collar, and said, " I arrest you in the king's name; I will commit you to prison!" This is as far as I can recollect; Mr. Sirr was not in my company. In the course of the conversation, Sirr said to Hevey, " I know you; your name is Hevey."

Q. What did Mr. Sirr say to Mr. Hevey?

A. Why, my lord, there was different expressions made use of. When Hevey was told that Sirr said " He ought to be hanged," he turned about, and looked at him. Hevey has always a strong, stern look, and then it must have been worse. He replied to Sirr, " You lie; you said I ought to be hanged; I'll make you prove it." Sirr then said, " You ought to be hanged, and I dare say you and your party think so," or words to that purpose. Hevey said, " I am of no party." Then said Major Sirr, "*I arrest you in the king's name!*" They came to the coffee-house door, and I left the passage open to them. Sirr said to Hevey, " You ought to be hanged!" Hevey answered, " You lie!"—Sirr then said, " This moment I arrest you in the king's name." Hevey said, he would go with him where he pleased. Sirr and Hevey went ought together, and walked arm and arm through Dame-street. This is all I know of the transaction.

Mr. Maguire examined by Mr. Wallace.

Q. Do you know Mr. Sirr?—A. I do.

Q. Do you know Mr. Hevey?—A. Yes.

Q. Do you recollect the month of September last?—A. I do.

Q. Have you heard of any thing which then happened to plaintiff?

A. Yes; he was taken into custody by Major Sirr, and committed to the provost.

Q. Had you any difficulty in getting to see him?

A. Yes, much, for I could not see him.

Q. Did you do any thing in consequence?

A. I did; I went by the order of Major Sandys, to see Mr. Hevey in the provost. He said he was in the custody of Major Sandys under a warrant from Mr. Sirr.

Q. What did you then do?

A. I returned to Major Sandys, and said to him I wondered he would detain Mr. Hevey on so trifling a matter. Mr. Sandys replied that it was not a trifle to insult Mr. Sirr, for he was in the trust of government; and that Hevey should be humbled, or stay where he was; that he should make an apology before he was enlarged. If you will call on Mr. Sirr, and tell him this is done, and if Mr. Sirr is satisfied, I will discharge him on your interference.

Q. Did you call on Mr. Sirr?

A. I waited on him on the 9th of September; he said he did not wish to hold him longer; but to show you it was not Hevey that should be detained, if I could find out the fellow who told Hevey what I said, I would punish him. I then said, if you write to Mr. Sandys, he will discharge Hevey, and I asked a letter from him. He replied, you will tell Mr. Sandys, by the same token, the last conversation I had with him in the castle yard, was on Hevey's business, and he will discharge him.

Q. Did you then call on Sandys? A. I did.

Q. What did he say?

A. He told me the token was right; and that if Hevey signed the *apology* he left him, he would discharge him; and desired I would go into the room, and cause him to sign said paper.

Q. Did you go? A. I did.

Q. What sort of a place did you see Mr. Hevey in?

A. I saw him in the provost prison.

Q. Describe the prison or place in which you saw Hevey?

A. I cannot describe it properly.

Q. You must describe it.

A. I saw Mr. Hevey in a small room (to the best of my recollection) where the first object I saw was a man sitting in a situation that delicacy prevents me from repeating. There were five or six beds; in one was a man sitting up, his person filthy, with a long beard, and a soldier's old coat laid over his shoulders. I saw a third man walking about reading; I suppose it was a prayer-book, and that he was reading the office of the dead!

Judge. Did you see the book? A. No, my lord.

Q. Then how can you say it was a prayer-book?

A. My lord, I thought it was from the horrid appearance of the place. I was so alarmed, and the stench was so offensive, that I refused to go farther than the door, lest I should catch some disorder, for the beds seemed to be full of people in sickness. I spoke to Mr. Hevey about his dreadful situation, and requested him to sign the *apology* that Major Sirr required, or to do any thing to get out of such a place; which Hevey refused. I then went to Sirr, and begged of him to liberate Hevey; I told him I would pay Hevey's expenses. After some conversation, he said "he had arrested Hevey in vindication of his *honour*; and he would leave it to Mr. Sandys to get Hevey discharged." But Mr. Sirr gave me no note to get him discharged. I said that the friends of Hevey must get him liberated by the due course of law. I then went to Mr. Sandys, and told what Mr. Sirr had said. Mr. Sandys said I must excuse him; he was in an awkward situation, as Hevey was confined under a general officer's warrant, and that it must be an order from Mr. Abbot (the secretary) only that could now do it. However, said he, if *proper* authority is left with me, I will discharge him forthwith. He then advised me to go to Hevey's room, and get him to

sign an *apology*, and then I will discharge him; but, said he, except he signs that paper, I cannot—he would not discharge Hevey unless he signed that *apology*! I then went to Mr. Hevey, and again entreated him to sign the *apology*. At first he refused, but at last he complied, and then we parted.

Q. When was Mr. Hevey liberated?

A. On the 11th of September, about twelve at noon.

Copy of the apology which Mr. Hevey would not sign.

“Whereas I, on the night of the 8th of September last, instant, in the coffee-room of the commercial buildings, made use of improper expressions to Mr. Sirr—I am very sorry for it, and beg your pardon, and assure you I had not, nor have not, any wish to insult any officer of this government, to whose clemency I owe my release from a sentence of the court-martial, by reversing the sentence inflicted on me by that court-martial, &c.

“11th of Sept. 1801.”

Copy of the apology which Mr. Hevey did sign.

“Sir, I replied hastily to an officer of government some nights ago, for which I am since confined; I am sorry by so doing it has gave offence to government.—I am, sir, yours, &c.

“JOHN HEVEY.

“To Major Sandys.”

Mr. Fletcher spoke in favour of the defendant, giving him much praise for his activity as an officer of his majesty in putting down the rebellion, saying that he did no more than his duty in arresting persons suspected of disaffection—he talked much of the mildness and mercy of the English

government, and said that the liberty of the press was now in its full vigour in Ireland! That Hevey having assaulted a magistrate in the execution of his duty, the action should have been brought against him—at any rate, sixpence damages was enough for so trifling an offence.* Mr. Plunket followed on nearly the same grounds.

A Mr. Hall, an attorney, was examined on the part of the defendant, of whom he gave a very flattering account; and said that if Hevey had behaved with a proper degree of civility to the major, he had not been sent to the provost. This gentleman's cross-examination by Mr. Curran afforded some amusement to the audience.

Mr. Barrington made an eloquent speech in favour of the plaintiff; our readers will be able to form an idea of its spirit from the following extracts:

I feel, said he, an indispensable duty to speak to this case, as I conceive it to be of the greatest importance, not only to the plaintiff, but to the crown and to the country. The plaintiff has brought his action to recover damages against the defendant for a violation of the law, and an assault upon the constitution. He has brought his case before you with confidence, and calls steadily for justice; not merely to avenge his own wrongs; not with the view of mercenary damages, or a malicious triumph, but he calls for justice against the public officer who has abused the public trust in his person; and in his person has endeavoured to convert the legal authority of the crown into a despotic instrument for the subject. My learned friend, Mr. Plunket, has declared sincerely his reluctance to speak to evidence; I am convinced it proceeded from an honest consciousness of a bad cause; which blunts his ingenuity, and flattens his talents, when he is called forth as the reluctant advocate of tyranny or of oppression. I have no such motive to decline speaking to evidence on the part of the plaintiff, and therefore I exercise my duty with

* Plaintiff laid his damages at 5,000/.

pleasure as his advocate ; and however impossible it is in me to display such splendid talents as my friend Mr. Curran, whose exertions every man must admire, yet, when the topic to be discussed is the liberty of the subject, he must be a slavish advocate indeed, whose energy does not rise in proportion to the importance of the discussion, and call out whatever talents God and nature gave him.

In this case it is only necessary to state the material facts, proved, in order to convince an honest jury of their bounden duty. These facts alone will teach you to form a just judgment, whether Ireland is to participate in the liberty of that country to which she is now united ; or to plunge back again into the chains and trammels of petty and despotic tyranny—that is the real question. If you, gentlemen of the jury, by your verdict, stamp a justification on the conduct of Major Sirr, Ireland is in bondage ; but if your verdict marks that conduct as unjustifiable and illegal, Ireland will regain some traces of the British constitution, and the personal liberty of the subject will be secured and protected.

I know I now speak before an honest jury, and a wise judge—the eyes of Ireland are fixed on the event of this trial—not as to Hevey or as to Sirr, but as to freedom or as to slavery. For it is fully and unequivocally proved, that Mr. Hevey, a subject, in the king's peace, against whom no public charge remained, and to whom no public crime was then imputed, and against whom no warrant existed, or any pretence of legal detention, was dragged from a public room, in the noon day, as a common felon, and plunged into an infectious dungeon, to enforce a private apology to a private subject, for a private insult, contrary to the spirit of the constitution, the law of the land, and the liberty of the country.

Gentlemen of the jury, could even the gliding shadow of distant liberty light one moment on a country where such an act should be held justifiable ? It is not a common assault committed by an ordinary person, on an ordinary occasion, in the common occurrences of error or of violence, where the

damages are measured by the private injury, and the wrongs of the individual are not identified with the general liberty of the country. It is not the case of a false imprisonment of a person in the lower orders of life, by a person of the same description, where the hours of detention measure the proportion of the injury; but it is a public and unwarrantable imprisonment of a respectable brewer of the city of Dublin, by *Major Sirr*, to gratify the feelings of private passion, under the colour of public duty! Defendant's counsel have dwelt on the past services of the defendant; but, gentlemen, it is a principle foreign and unknown to our constitution, that any person, on any authority, should claim a privilege to commit acts of injury and oppression on his fellow citizens with impunity, for past services, and for which he was so amply rewarded. It is unknown to the moderns—it was unknown to the ancients. The last of the Horatii, though he saved his country, was condemned for the death of his sister; Manlius was flung from the Tarpeian Rock, though he defeated the designs of the Gauls, and saved the capitol of Rome. Yet why should we have recurrence to the pages of ancient history? we have a modern and recent example, and with which the *major* is better acquainted than with the story of the Horatii—I mean *Jemmy O'Brien*!—he also defeated the machinations of the Gauls, was the saviour of his country, and preserved our capitol—yet *Jemmy* received the reward of past services, for he was hanged in this city for murder! His past services could not protect him from the law—he died, and the law triumphed! It is a weak and insolent defence, to say that the defendant's services should warrant his offences—it is absurd to say, that because *Major Sirr* knew and supported the law in 1798, he should be warranted in overturning his own fabric, and be at liberty to break through both law and constitution in 1801. Because he defended the constitution in time of war, is he to destroy it in time of peace?—and because a rebellion once existed, is a tyranny to be erected on its ruins? This argument of the defendant's counsel admits my

client's case, because if the defendant's counsel had a better argument, they would certainly have used it. But they had none—the law failed them—justice failed them—and they were obliged to have recourse to finesse, and endeavour to lead away the minds of the jury from the fact in issue, and impose upon their loyalty, when they could not mislead their reason. Defendant's counsel, as another argument, have had recourse to another finesse, equally weak, but more unwarrantable than the former, namely, that the plaintiff, Mr. Hevey, had been a rebel in 1798, and convicted, and sentenced to transportation; and that, therefore, a personal injury to him, by so meritorious a person as the defendant, should weigh little with the jury. Monstrous assertion! Even if Mr. Hevey had been guilty, which I deny, such a doctrine is most vicious. God forbid that when a subject receives a pardon, and is restored to the bosom of his country, he should remain an outlawed slave in the midst of a free people; on the contrary, Mr. Hevey was as much under the protection of the law as Major SIRR, and both delicacy and honour, and public policy, should rather have united in making a pardoned man forget that he had offended, than in making that pardoned offence a pretence for his oppression. Such a pretence is an insult to the throne which pardoned—a charge against the lenity of the king—and a crime against the liberty of the subject—and, of all the means which human ingenuity could devise, the most effectual means of perpetuating disaffection. But I deny the fact of Mr. Hevey's guilt. In times when it was enough to be suspected to warrant punishment, Mr. Hevey had enemies; he belonged to the persecuted cast, and was charged, of course, with high treason; the minds of all men were inflamed—rebellion raged—blood was familiar—animosity was implacable—and Mr. Hevey was sent to Kilkenney, to be tried by a court-martial for high treason; a reward was offered for any person who would give evidence against him—no creditable witness could be found—no high treason could be proved—yet he was sentenced to seven

years' transportation on the *suspicion of high treason*, though he must have suffered death if guilty. The proceedings of the court-martial were laid before Lord Cornwallis; he considered them, and, under his sign manual, gave the lie direct to the minutes of that court-martial, ordering Mr. Hevey to be discharged, inasmuch as it appeared that he was not active in the rebellion; and let down the sentence easy, by directing Mr. Hevey to give security, which he did. Mr. Hevey was discharged; he betook himself to his industry as a brewer, a man of wealth, and never had any species of offence laid to his charge, till the defendant treated him like a felon in the commercial coffee-room, and, by such treatment, trampled on the justice and humanity of the absent viceroy. Where then lies the guilt of Mr. Hevey? Where then lies the justification of Major Sirr?—is it in the minutes of the Kilkenny court-martial—or is it in counteracting the royal lenity, or viceregal justice? No; the whole transaction is to be found in *private passion* and *personal animosity*, working on an irritated mind, to commit a most unwarrantable injury.

Gentlemen of the jury, the damages laid in the declaration, even if you find the full amount of them, are inadequate; you will consider the *hardships* inflicted on the plaintiff, when in the provost prison; till the story of my client became public, I could not have believed it possible, that after all pretence of insurrection had ceased—after having been *told* that Ireland would have British liberty, when she became united to Britain—I could not have believed it possible that there could have existed in the minds of what is called a *free city*, a deep, dark, loathsome, and infectious dungeon, boasting all the qualities of Bastiles and Inquisitions—kept by an individual, into which his majesty's peaceable subjects could be plunged without crime, and in which they could be detained by false and fabricated returns of the king's writs, under pretence of state offences. I could not have believed it possible Mr. Hevey could have been so confined, unless the fact had

been proved before you on oath, beyond a doubt—yet the fact is so; and whatever my client has suffered, he has the gratifying consolation of reflecting, that his disclosure of this transaction will inform his majesty's government of the dangerous abuse of their authority, which I have no doubt they not only never knew, or countenanced, but certainly will punish: and have now a glorious opportunity of showing this nation that no pretence of past services can warrant a stab to the liberty of the country. My client may by this day's disclosure give a weapon to the law, to defend the constitution; and his fetters may secure the liberty of the subject. But as to damages, recur to the circumstances of his confinement—the gates of no common prison closed upon him—a loathsome, close, and narrow dungeon, was his lodging: disease and misery were the inhabitants of the room in which he was immured—the first object which struck the witness was a wretch in the midst of the room, urged by disorder and confinement to the most disgusting act of a human creature, every sense alike affected. Another he saw half dressed in a ragged shirt, discoloured by the disease of its owner. A third, with a small book reading, as he conceived, the last services to a dead, or dying captive. He looked no more, but hastily withdrew, nor could even the voice of friendship tempt him to enter further into a place, where contagion and misery seemed the ruling powers. Yet this was the prison chosen for my client, *because he would not apologize to a fellow subject!* There were many public prisons in Dublin, where a person of his description would be suitably accommodated; where cleanliness and humanity are strictly attended to; to these he was not taken, or before any public officer whatsoever. The keepers of these prisons would not have detained him without some legal committal for some certain crime; and this fully accounts for the *place* to which his person was consigned—secret and despotic. Will you by your verdict say that Mr. Hevey sustained there no injury from such treatment?

Do you, gentlemen of the jury, know so little of the world as not to perceive that many persons who were, in 1798, charged with rebellious practices, are now useful members of society, under the protection of the law, and the safeguard of the constitution? By what new code of jurisprudence then would Major Sirr be authorized, in defiance of both, to invade the liberty of the subject, and despise the king's pardon? Is *his* authority created to keep alive the dying embers of disaffection, to make men believe they are not protected by the law, and thereby excite new and ruinous projects for redress and emancipation; and to excite the contradictory phenomenon of a petty tyranny, existing within a free constitution, and a *peace-officer* taking the most effectual steps to disturb the growing tranquillity of the country? Major Sirr and Major Sandys appear correspondent and connected in this transaction; my client handed from one to the other, they appear equally to understand each other's meanings, and to forward each other's objects—the one had seized, the other had detained my client; neither of them had authority for doing so, but both of them had necessity for some justification; they worried their imaginations to find one. Mr. Hevey had been convicted, but that did not justify them, for Lord Cornwallis proved his innocence. Mr. Hevey was of a once proscribed sect, but that proscription was at an end, and no justification could be found there; even fancy was in vain applied to, to find his crime and their justification; but even fancy failed them; and at length his crime was ascribed to be, that he had retorted insult by insult, and had presumed to say that Major Sirr had told a falsehood, and this was conceived to be a capital offence; because, if it was not an offence against the state, the provost prison was not adapted to his confinement, and Major Sandys had no right to detain him. The two majors, like Castor and Pollux, felt the pleasures of mutual support, and the necessity of mutual assistance, and when one of the demigods was offended, both the demigods punished. My client for three long days and

nights, felt the omnipotence of their power, and the punishment of his presumption; they both were culpable—both acted. Is that a reason he is not to be compensated in damages by either? To say so, would be a new species of offrontery to impose upon a just jury, and dishonour the name of justice.

There is a circumstance mentioned by one of the witnesses which merits observation; and shows the dreadful dungeon into which my client was cast for this offence to Major Sirr; damages should be given proportioned to the injury the complaint deserves; but how will you proportion the damages when you recollect that this witness said he went to Mr. Hevey's room in the provost prison, and there saw a man read out of a small book, which he took to be a book of prayer, and, as he believed upon his oath, the office of religion for the dead or dying man. Infection and disease had opportunely made a vacancy for my client to lie down on the same bed which was then yielding up its morbid inhabitant to the grave. In such a dismal dungeon was my unfortunate client confined, without legal authority, for the space of three days, in order to force from his reluctant lips—not a confession of guilt; not an impeachment of accomplices; not a discovery of insurrections, or development of treasons—no; it was only to wring from his lips *a humble personal apology to Major Sirr!!*—and, under pretence of that apology, to lay some ground for a future justification; the plaintiff refused to sign any apology; but, by the entreaties of his friends, the consideration of his trade, his children, his health, probably his existence, an apology was extorted without having committed an offence, and that apology dictated by *Major Sandys* for his friend *Major Sirr*, to gratify the offended honour of the latter! This is probably the first instance, in any country remote from slavery, where so outrageous and wanton an oppression could be fathered, even for a moment, on a government whose name and authority were traduced by the transaction. That apology so signed by him, has been read in court this

day; you have heard it, gentlemen of the jury—was the refusal to sign such an apology a justification for such an outrage? Let me ask you, as guardians of public freedom, is the liberty of the citizens of Dublin to be thus trampled upon with impunity? What man's person, or property, or character, or life, is one moment secure if such transactions are not punished by most ample and exemplary damages?

Lord Kilwarden charged the jury to the following effect: Commenting on the prejudices incident to the infirm state of the human mind, his lordship said it was a weakness so universal, and so interwoven in the nature of man, that judges can no more boast of being entirely exempt from them than other men. It was, however, their peculiar duty to guard against any impressions by which justice might eventually be perverted, and the subject injured. It was equally incumbent on juries to exert the utmost vigilance and care of which they are capable, to keep their judgments free from any bias to which they might be susceptible from the zeal or abilities of counsel, whose duty it was to take advantage of any casual occurrence, which they might conceive led to establish the cause of their respective clients. Much eloquent declamation had been expended by gentlemen on one side, on tyranny, on the coercion of government, on the decadence of our freedom, on the wisdom of the constitution, and the liberty of the people. To these, the merits of Major Sirr, as a public officer, and the supposed delinquency of the plaintiff on a former occasion had been superadded. It was, however, the duty of the jury to discharge every idea of this nature from their consideration, and confine themselves to that narrow point within which the case will certainly be found to rest, when deprived of all those extraneous circumstances in which it had been involved. The case is a very simple one, between two private individuals, John Hevey and Charles Henry Sirr; as such alone they were to consider it, and try what reparation should be made to the plaintiff for the injury he alleges to have sustained, if they shall believe,

from the course of the evidence before them, that he had sustained any.

The occasions which, under Providence, seldom occur to compel governments to transcend the fixed boundaries of the subject's freedom, under our happy constitution, are still of that momentous and awful description, as to call for acts of military coercion; and to these seasonable acts have we been indebted for the restoration of those very laws, which, in times of tranquillity, are so forcible and energetic in prohibiting the wanton intrusion of military power. It is, in fact, to the principle which so many have been pleased to call tyranny, that we are indebted for the preservation of that liberty, which, in necessary instances, must have been violated, in order to perpetuate its effects, and render the happiness of a people permanent. Every man invested with a temporary authority beyond the laws, should, therefore, be made acquainted with the necessity which prompted it, and regulate his conduct by a firm, undeviating regard to that duty which necessity imposes, from considerations of the public safety alone; so that if Major Sirr, instigated, as he believed, by a momentary irritation, had stretched his authority, in making the caption and committing the plaintiff, soon as his emotions had subsided, he should have ran with impetuosity to liberate him. But, instead of that, he temporized, and, as appeared to his lordship, trifled with the plaintiff in the message he sent him, respecting an order to Major Sandys for his release, with the latter's answer about his detention on a general officer's warrant, which warrant Sirr, his lordship conceived, must have cognisance of, before he sent Hevey an ambiguous or fallacious message.

The next question for the consideration of the jury, regarded the principle of liberal or nominal damages. If, with his lordship, the jury could perceive no trait of malice or revenge in the conduct of Sirr, it was merely their duty to appreciate damages for the plaintiff, according to the inconvenience he was subject to, or the injury he had actually sus-

tained. If, on the other hand, they found reason to believe that the plaintiff, in resisting those interrogatories which Major Sirr had put to him, immediately after conveying him to the provost, respecting a protection or some authority for being at large, had a view to provoke confinement, in order to lay a foundation for these proceedings, it should then be their duty to give none but damages merely nominal. These were the observations which occurred as necessary for his lordship to deliver, which he recommended to the jury to weigh and compare, with, perhaps, many more cogent ones of their own; at the same time, not forgetting to discharge their minds from every species of intemperate feeling or indignation, which different relations and comments on the same occurrence, might possibly have contributed to excite in them.

The *loyal and conscientious* jury gave a verdict for the plaintiff, 150*l.* damages, with costs.

COUNSEL for the plaintiff: Messrs. Curran, Barrington, M'Nally, Ball, Orr and Wallace. Agent, Mr. Cooke.

COUNSEL for the defendant: Messrs. Fletcher, Plunket, Green, Ridgeway, and Kemis. Agent, Mr. Kemis, Crown Solicitor.

* * *The following trials are taken from a government publication in Dublin. It gives a melancholy account of the weak and abortive insurrection of the 23d of July, 1803, which, amongst many incalculable evils, caused the murder of Lord Kilwarden, and the premature death of that amiable, but unfortunate enthusiast Robert Emmet, Esq. This modern Curtius devoted his life to his country, but his country received no benefit by his death. The spirit and intention of this publication will be best understood by the following extract from the introduction :*

“ EVERY lover of order, of virtue, and social security, must recollect with horror the insurrection which broke out in the city of Dublin, on the evening of the 23d of July—an insurrection which will be ever infamous, not only for its unprovoked and wicked treasons, but also for the savage murder of Lord Kilwarden, his nephew the Rev. Richard Wolfe, Col. Brown, of the 21st regiment, Messrs. Parker and Edmiston, of the Liberty Rangers, and many other loyal and unoffending persons. Without detailing the whole of the evidence, which, by rendering this work expensive, would have narrowed its circulation, all that is material and instructive is preserved. From the luminous and eloquent statements of the Right Hon. Mr. O’Grady ; from the affecting and admonitory exhortations of Mr. Baron George ; and the interesting speeches of Mr. Curran and Mr. Plunket, may be collected, a concise history of the insurrection. From the legal statements of his majesty’s Attorney-General ; from the preceptive exhortations of the venerable bench ; and from the instructive speeches of the counsel, the people will learn to understand, to value, and to love the excellent constitution under which we have the happiness to live, and which displays all its perfections, and imparts all its blessings under the benignant rule of the virtuous Lord Hardwicke.

From the warning voice of the unfortunate Emmet, who might have been a support and an ornament to society—that voice which spoke almost from the grave, and seemed assimilating to the energy and inspiration of eternal truth; they will learn to appreciate the character of *that* enemy, whose abandoned emissaries would seduce them from their king, their God, and their country! So apprehensive was the unfortunate Emmet, even of a limited and restrained alliance with France, that he commenced the insurrection with means the most disproportionate, and under a strong impression of despair, rather than seek or wait for her assistance. So convinced was he of the perfidy and vices of the modern Gauls, that, when his failure was no longer doubtful, he warned his countrymen against those friends to despotism and dominion, those enemies to law and liberty!”

THE TRIAL

OF OWEN KIRWAN, FOR HIGH TREASON:

SPECIAL COMMISSION.*

WEDNESDAY, 31st AUGUST, 1804.

OWEN KIRWAN was put to the bar, and arraigned on an indictment for high treason, to which he pleaded not guilty. After a jury had been sworn,

The Attorney-General (Mr. O'Grady) made a long and flourishing speech, defining the nature of treason so often described in the course of these trials, and the heinous offence of the conspirators now before the court. In stating to you, gentlemen of the jury, said he, the particular circumstances of this case, so far as they relate to the prisoner, it will not be necessary for me to enter into a very minute or very accurate survey of the progress of disaffection in this country. But certainly it is matter of some consolation, to know that the conspiracy which broke out in open insurrection and rebellion, on the 23d of July last, was confined within much narrower limits than the promoters of it are willing to inculcate. Whether we consider the numbers who have embarked in the enterprise, their wealth, or their character, it will appear contemptible in the extreme. So far as it had

* A number of unfortunate men were tried before this commission, condemned, and immediately sent to the gallows. We select the two following for the singularity of the cases, and the sentiments of the speakers.

for its odious object the subversion of the government and the constitution of this country, it was absurd and romantic; it was idle and visionary even in the opinion of many of those who embraced it. But so far as it was calculated to make a false impression of our situation upon foreign countries, and to depreciate our loyalty in the estimation of Europe, it was a dangerous design; and though from the abandoned profligacy of those who were employed as the immediate instruments of its execution, we have to lament many private calamities and disgusting horrors, yet perhaps they should be considered as the visitations of Providence to confound the devices of our enemies, and to rouse the loyal energies of the nation.

Gentlemen, the last time we were collected here, upon an occasion similar to the present, was in the year 1798; and it would be, in truth, a dismal and distressing reflection, that during the interval which has since elapsed, the mildness, and clemency, and conciliation of our own government, contrasted with the oppression, extortion, and tyranny exercised over France, and the unhappy countries which surround her, should have wrought no change in the political feelings of Ireland. But I am happy to state that there is no room for such reflection: the good sense and propriety of the country have taken the alarm, and can no longer be seduced by schemes of avarice and delusion.

After going through the whole of the evidence, which was as full and as convincing as he could have wished, Mr. Attorney-General concluded with saying, I have no doubt you will faithfully discharge your duty to the prisoner and your country; I will not anticipate your verdict. If the case should be doubtful, you will be indulgent to the prisoner, but if you are called upon for compassion, you will exercise that which embraces the whole body of the people, as well as the narrow circle of the dock. The calm tranquillity which has succeeded the 23d of July, notwithstanding the hopes and predictions of traitors, has enabled you at this day

to enter upon the investigation with becoming composure, and to extend to the prisoner the fullest advantages of the British constitution. I wish you to do so, and I am happy at being able to call your attention to the universal tranquillity of our country. The storm has passed over us, and the constitution has survived. Our gracious monarch sits unmoved upon his throne, his sceptre resting upon his people. Contrast your situation with those unhappy countries which have been subjugated by the arms, or seduced by the artifices, of France. "They are brought down and fallen, but we are risen and stand upright." And may we retain that proud attitude, until peace and tranquillity shall be restored to Europe, and until that nation which has been so long employed to scourge other countries for their crimes, shall in due time be called upon by the wisdom of Providence to answer for her own.

EVIDENCE FOR THE CROWN.

Benjamin Adams sworn. He proved that on the evening of the 23d July, as he was looking out of his window, which was nearly opposite to the prisoner's house, in Plunket-street, he saw the prisoner, who was an old clothesman, go very often up Plunket-street, towards Thomas-street, with a green bag in his hand, which appeared on his going nearly full, but was always empty on his return. Several men collected at the prisoner's house, and as the prisoner was discoursing with another man at his own door, the witness saw a racket which came from towards Thomas-street, clear over Plunket-street, and when the prisoner saw it, he took off his hat, and cried out, "there is the racket, my boys!" He then returned into his shop where his wife was standing—he had a green frock coat on him, which she made him take off, handing him a cotton jacket, which he put on; after which he armed himself with a pike, saying, "God's blood, boys, turn out—the town is our own to night;" adding these words: "any man that does not turn out to-night will surely be put down to—

morrow." The prisoner and his party, consisting of about eight or ten men, and all armed with pikes, then ran up the street, and turned the corner towards Thomas-street. The witness did not see him again that night.

John Adams, father of the preceding witness, swore, that on the night of the 23d, about a quarter past 9 o'clock, as he was nailing up some boards at a cellar in Plunket-street, he saw some men with pikes whom at first he supposed were watchmen. A woman took him by the sleeve, and pulling him into his own house, followed him, saying, that "they would all be massacred that night," adding, that "that was the time to escape." He flew up stairs, looked out of the window, and saw a number of pikemen—he heard a man desire "all the boys to turn out to arms," and thought he would be killed. His wife desired him to escape, and leave her to the mercy of the world. He accordingly went on the roof of the house, through a dormant window, where he found five or six men who sought concealment like himself, and there, in the valley of the roof, they lay till near one o'clock. The witness did not see the prisoner afterwards for a week, and he never recollected the prisoner having been so long from home.

Lieut. Stewart Hume Douglas, of the 21st regiment, sworn—deposed, that he was stationed on the 23d of July, at the barrack on the Coombe, and about ten o'clock in the evening the rebels made a charge upon his men. Three of them approached first, and fired on his party, by which two men were wounded. The witness then ordered his men to fire upon the rebels, and he heard the voice of some person urging them forward, but they did not seem to wish it, upon which he gave them another volley; they retreated, and he gave them a third volley as they turned the corner of Francis-street, through which they all made off. After this, they found four dead men upon the ground. One man, about 60 or 70 years old, made an attempt with a pike upon the

soldiery, on which they threw up his pike with their arms, knocked him down, and piked him with his own pike.

Richard Cowley, a watch constable, sworn—deposed, that his watch-house in Vicar-street, was attacked twice on the evening of the 23d of July; in the course of that evening, Lord Kilwarden was brought to the watch-house wounded. They were afraid, at first, to open the door, thinking that it was a decoy, but when he said it was Lord Kilwarden, they let him in. They got some warm blankets, sheets, and a pillow, and put him upon them. He was wounded very much, and about the head, and was bleeding very much. While in this state, and yet alive, Major Swan came into the watch-house, and said, “that the villains should be hanged.” On which his lordship desired him “not to hang them, but to give them the benefit of the law and a trial”—or something to that effect. In the state in which they were then, the witness could not remember the exact words. His lordship died a few minutes afterwards.

Thomas Moorhead sworn. He had been postillion to the late Lord Kilwarden, and drove his carriage on the 23d of July from Newlands, his lordship's country-house, until they came to town, about half past 9 o'clock. In the carriage were also the Rev. Richard Wolfe, his lordship's nephew, and Miss Wolfe. When they came into Thomas-street, the carriage was stopped by a number of men armed with pikes, pistols and blunderbusses; and when they opened the door they cried out that they had Lord Kilwarden! The lady they took out, and bid her go about her business. His lordship was unwilling to quit the carriage, but after a little time they dragged him out, and stabbed him, and struck him on the head; the witness heard his lordship repeatedly call for mercy, but in vain; they were fighting among themselves who could get the most blows at him; he fell there. The witness saw Mr. Richard Wolfe run away, pursued by men with pikes; but he did not see him again until the next morning.

when he saw him dead. The witness was then suffered to drive off the carriage. Here closed the case for the crown.

Mr. CURRAN, on the part of the prisoner, addressed the court and the jury as follows:—He said that it had become his duty to state to the court and jury the defence of the prisoner. He said he had been chosen for that very unpleasant task, without his concurrence and knowledge; but, as soon as he was apprized of it, he accepted it without hesitation. To assist a human being, labouring under the most awful of all situations, trembling in the dreadful alternative of honourable life or ignominious death, was what no man, worthy of the name, could refuse to man—but it would be peculiarly base in any person who had the honour of wearing the king's gown, to leave the king's subject undefended, until a sentence pronounced upon him had shown that neither in fact nor in law could any defence avail him. He could not, however, but confess, that he felt no small consolation, when he compared his present with his former situation upon similar occasions. In those sad times to which he alluded, it was frequently his fate to come forward to the spot where he then stood, with a body sinking under infirmity and disease, and a mind broken with the consciousness of public calamity, created and exasperated by public folly. It had pleased Heaven that he should live to survive both these afflictions, and he was grateful to its mercy. I now, said he, come here through a composed and quiet city—I read no expression in any face, but such as mark the ordinary feelings of social life, or the various characters of civil occupation—I see no frightful spectacle of infuriated power, or suffering humanity—I see no tortures—I hear no shrieks—I no longer see the human heart char'd in the flame of its own vile and paltry passions, black and bloodless, capable only of catching and communicating that destructive fire by which it devours, and is itself devoured—I no longer behold the ravages of that odious *bigotry*, by which we were deformed, and degraded, and dis-

graced—a bigotry against which no honest man should miss an opportunity of putting his countrymen, of all sects and descriptions, upon their guard. It is the accursed progeny of servile hypocrisy—of remorseless lust of power—of insatiable thirst of gain, labouring for the destruction of man under the specious pretences of religion—her banners stolen from the altar of God, and her allies congregated from the abysses of hell.* She acts by vetaries to be restrained by no compunctions of humanity, for they are dead to mercy—to be reclaimed by no voice of reason, for refutation is the bread on which their folly feeds—they are outlawed alike from their species and their creator—the object of their crime is social life, and the wages of their sin is social death; for, although it may happen that a guilty individual should escape from the law that he has broken, it cannot be so with nations—their guilt is too extensive and unwieldy for such escape—they may rest assured that Providence has, in the natural causes and effects, established a system of retributive justice, by which the crimes of nations are sooner or later avenged by their own inevitable consequences. But that hateful bigotry, that baneful discord that fired the heart of man, and steeled it against his brother, has fled at last, and I trust for ever. Even in this melancholy place I feel myself restored and recreated by breathing the mild atmosphere of justice, mercy, and humanity. I feel I am addressing the parental authority of the law—I feel I am addressing a jury of my countrymen, my fellow subjects, and my fellow christians—against whom my heart is waging no concealed hostility—from whom my face is disguising no latent sentiment of repugnance or disgust. I have not now to touch the high-raised strings of any angry passions in those that hear me—nor have I the terror of thinking that if those strings cannot be snapt by the stroke, they will only be provoked into a more instigated vibration.

Mr. Curran then proceeded to observe, that this happy

* Here is a fine description of *bigotry*.

change in the minds and feelings of all men was the natural consequence of that system of mildness and good temper which had been recently adopted, and which he strongly exhorted the jury to imitate, and to improve upon—that they might thereby demonstrate to ourselves, to Great Britain, and to the enemy, that we are not that assemblage of fiends which we had been alleged to be, unworthy of the ordinary privilege of regular justice, or the lenient treatment of a merciful government. He said it was of the utmost importance to be on their guard against the wicked and mischievous representation of the circumstance which called them then together—they ought not to take from any unauthenticated report those facts which they could have directly from sworn evidence. He had heard much of the dreadful extent of the conspiracy against this country—of the narrow escape of the government. They now saw the fact as it was. By the judicious adoption of a mild and conciliatory system of conduct, what was six years ago a formidable rebellion, had now dwindled down to a drunken riotous insurrection—disgraced, certainly, by some odious atrocities—its objects, whatever they were, no doubt, highly criminal; but, as an attack upon the state, of the most contemptible insignificance. He did not wonder that the patrons of burning and torture should be vexed, that their favourite instruments were not employed in recruiting for the rebellion. He had no doubt but that had they been so employed, the effect would have followed, and that an odious, drunken insurrection, would have been easily swelled into a formidable rebellion—nor was it strange that persons so mortified should vent themselves in wanton, exaggerated misrepresentation, and in unmerited censure—in slandering the nation in the person of the viceroy—and the viceroy in the character of the nation; and that they should do so, without considering that they were weakening the common resources against common danger, by making the different parts of the empire odious to each other; and by holding out to the enemy, and falsely holding out, that we

were too much absorbed in civil discord to be capable of effectual resistance. In making this observation, he said, his wish was merely to refute slander upon his country. He had no pretensions to be the vindicator of the lord lieutenant of Ireland, whose person he did not know that he had even seen;* at the same time, he said, that when he was so necessarily forced upon the subject, he felt no disposition to conceal the respect and satisfaction with which he saw the king's representative comport himself as he did, at a period of no little anxiety, though of no considerable danger, if we may believe the evidence we have heard. He thought it was a proof of his excellency's firmness and good sense, not to discredit his own opinion of his confidence in the public safety, by any ostentatious display of unnecessary open preparation; and he thought he did himself equal honour by preserving his usual temper, and not suffering himself to be exasperated by the event, when it did happen, into the adoption of any violent or precipitate measures. Perhaps he (Mr. Curran) might even be excused, if he confessed that he was not wholly free from some professional vanity, when he saw the descendant of a great lawyer was capable of remembering, what, without the memory of such an example, he perhaps might not have done, that even in the moment of peril, the law is the best safeguard of the constitution. At all events, he felt that a man who at all times had so freely censured the extravagances of power and force as he had done, was justified, if not bound by the consistency of character, to give the fair attestation of his opinion to the exercise of wisdom and humanity wherever he found them, whether in a friend or in a stranger. He hoped, he said, that these preliminary observations were not wantonly and irrelevantly delaying them from the question which they were to try, and which he was ready to enter into; but there still remained a circumstance to be observed upon for a moment before they entered upon

* It appears from this, that Mr. C. is no favourite at court.

the real subject of their inquiry—the guilt or innocence of the prisoner; the fact that had been so impressively stated, the never to be too much lamented fate of that excellent man Lord Kilwarden—(and Mr. Curran drew a character of him, as marked by the most scrupulous anxiety for justice, and by the mildest and tenderest feelings of humanity)—but, said he, let us not wantonly slander the character of the nation by giving any countenance to the notion, that all the horror of such a crime could be extended further than the actual perpetration of the deed. The general indignation, the tears that were shed at the sad news of his fate, show that we are not that nest of demons on whom any general stigma could attach from such an event; the wicked wretch himself, perhaps, has cut off the very man through whose humanity he might have escaped the consequences of other crimes; and, by a hideous aggravation of his guilt, has given another motive to Providence to trace the murderer's steps, and secure the certainty of his punishment; but, on this occasion, the jury should put it out of their minds, and think nothing of that valuable man, save his advice, "that no person should perish but by the just sentence of the law," and that advice he hoped they would honour, not by idle praise, but by strict observance.

Mr. Curran now proceeded to state the charge in the indictment, and the evidence adduced, and contended that the testimony showed no fact of conspiracy—no adopted object of treason—no actual attack—no number of persons engaged that could possibly be adequate to the accomplishment of such an object. He strongly reprobated the idea of acting upon what was called notoriety of rebellion; notoriety was at best another name for reputation, which could not, even by law, be given in evidence in any criminal case, and which *à fortiori* could not sustain a verdict of conviction; but, he said, if the actual evidence of the guilt was thus weak, it was not unfair to consider the probability of such a conspiracy at the present time. It was clear, from the evidence, that it could

not be imputed to any sect, or party, or faction; because no sect nor faction could fail, had they acted in it, of engaging one hundred times the number of deluded instruments in their design. We may then fairly ask, is it likely the country at large, setting even apart all moral ties of duty or allegiance, or the difficulty, or the danger, could see any motive or interest to recommend to them the measure of separating from England, or fraternizing with France? Whether there was any description of men in Ireland who could expect any advantage from such a change! And this reasoning, he said, was more pertinent to the question, because politics were not now, as heretofore, a dead science, in a dead language; they had now become the subject of the day, vernacular and universal, and the repose which the late system of Irish government had given the people for reflection, had enabled them to consider their own condition, and what they, or any other country, could have to hope from France, or rather from its present master. He said he scorned to allude to that personage merely to scold or to revile him;—unmeaning obloquy may show that we do not love the object, but certainly that we do not fear him. He then adverted to the present condition of Bonaparte—a stranger—a usurper—getting possession of a numerous, proud, volatile, and capricious people; getting that possession by military force—able to hold it only by force; to secure his power, he found, or thought he found, it necessary to abolish all religious establishments, as well as all shadow of freedom. He had completely subjugated all the adjoining nations. Now, said Mr. Curran, it is clear that there are but two modes of holding states, or the members of the same state together, namely, community of interest, or predominance of force—the former is the natural bond of the British empire; their interests, their hopes, their dangers, can be no other than one and the same, if they are not stupidly blind to their own situation; and stupidly blind, indeed, they must be, and justly must they incur the inevitable consequences of that blind-

ness and stupidity, if they have not fortitude and magnanimity enough to lay aside those mean and narrow jealousies which have hitherto prevented that community of interest and unity of effort, by which alone we can stand, and without which we must fall together.

But force only can hold the acquisitions of the first consul: what community of interest can he have with the different nations that he has subdued and plundered? Clearly none. Can he venture to establish any regular and protected system of religion amongst them? Wherever he erected an altar, he would set up a monument of condemnation and reproach upon those wild and fantastic speculations which he is pleased to dignify with the name of philosophy, but, which other men, perhaps, because they are endowed with a less aspiring intellect, conceive to be a desperate anarchical atheism, giving to every man a dispensing power for the gratification of his passions—teaching him that he may be a rebel to his conscience with advantage, and to his God with impunity. Just as soon would the government of Great Britain venture to display the crescent in their churches, as Bonaparte show any reverence to the cross in his dominions.* Apply the same reasoning to liberty: Can he venture to give any reasonable portion of it to his subjects at home, or his vassals abroad? The answer is obvious; sustained merely by military force, his unavoidable policy is to make *the army every thing, and the people nothing*. If he ventured to elevate his soldiers into citizens, and his wretched subjects into freemen, he would form a confederacy of mutual interest between both, against which he could not exist a moment. If he relaxed, in like manner, with Holland, or

* In this speech Mr. Curran showed that he was no prophet. Bonaparte not only established the catholic religion in his dominions, but also got his holiness the pope to crown him as emperor!!!—When it suits his purpose, Bonaparte can play “the game of religion” as well as any of them. For an account of this curious “game,” see the history of Rome for the last 12 or 1300 years.

Belgium, or Switzerland, or Italy, and withdrew his armies from them, he would excite and make them capable of instant revolt. There is one circumstance which just leaves it possible for him not to chain them down still more rigorously than he has done, and that is the facility with which he can pour military reinforcements upon them, in case of necessity. But, destitute as he is of a marine, he could look to no such resource with respect to any insular acquisition, and, of course, he should guard against the possibility of danger by so complete and merciless a thralldom as would make any effort of resistance physically impossible.

Perhaps, my lord and gentlemen, continued Mr. Curran, I may be thought the apologist, instead of the reviler of the ruler of France. I affect not either character. I am searching for the motives of his conduct, and not for the topics of his justification. I do not affect to trace those motives to any depravity of heart or of mind which accident may have occasioned for the season, and which reflection or compunction may extinguish or allay, and thereby make him a completely different man with respect to France and to the world; I am acting more fairly and more usefully to my country, when I show that his conduct must be so swayed by the permanent pressure of his situation, by the control of an unchangeable and inexorable necessity, that he cannot dare to relax or relent without becoming the certain victim of his own humanity or contrition. I may be asked, are these merely my own speculations, or have others in Ireland adopted them? I answer freely, *non meus hic sermo est*. It is, to my own knowledge, the result of serious reflection in numbers of our countrymen. In the storm of arbitrary sway, in the torture of suffering, the human mind had lost its poise and its tone, and was incapable of sober reflection; but by removing those terrors from it, by holding an even hand between all parties, by disdaining the patronage of any sect or faction, the people of Ireland were left at liberty to consider her real situation and interest, and happily for herself, I trust

in God that she has availed herself of the opportunity. With respect to the higher orders even of those who thought they had some cause to complain, I know this to be the fact; they are not so blind as not to see the difference between being proud, and jealous, and punctilious, in any claim of privilege or right between themselves and their fellow subjects, and the mad and desperate depravity of seeking the redress of any dissatisfaction that they may feel by an appeal to force, or to the dreadful resource of treason and of blood.

As to the humbler orders of our people, for whom I confess I feel the greatest sympathy, because there are more of them to be undone, and because, from want of education, they must be more liable to delusion, I am satisfied the topics to which I have adverted, apply with still greater force to them than to those who are raised above them. I have not the same opportunity of knowing their actual opinions; but if those opinions be other than what I think they ought to be, would to God they were now present in this place, or that I had the opportunity of going into their cottages, and I well know I should not disdain to visit them, and to speak to them the language of affection and candour on the subject; I should have little difficulty in showing to their quick and apprehensive minds how easy it is, when the heart is incensed, to confound the evils which are inseparable from the destiny of imperfect man, with those which arise from the faults or errors of his political situation; I would put a few questions to their candid and unadulterated sense; I would ask them—do you think that you have made no advance to civil prosperity within these last twenty years? Are your opinions of modern and subjugated France the same that you entertained of popular and revolutionary France fourteen years ago? Have you any hope, if the first consul got possession of your island, he would treat you half so well as those countries at his door, whom he must respect more than he can respect or regard you? And do you know how he treats those unhappy nations? You know that in Ireland there is little per-

sonal wealth to plunder, that there are few churches to rob. Can you then doubt that he would reward his rapacious generals and soldiers by parcelling out the soil of the island among them, and by dividing you into lots of serfs to till the respective lands to which they belonged? Can you suppose that the perfidy and treason of surrendering your country to an invader, would to your new master be any pledge of your allegiance? Can you suppose, that while a single French soldier was willing to accept an acre of Irish ground, that he would leave that acre in the possession of a man who had shown himself so wickedly and so stupidly dead to the suggestions of the most obvious interest, and to the ties of the most imperious moral obligations? What do you look forward to with respect to the aggrandizement of your sect? Are you protestants? He has abolished protestantism with christianity. Are you catholics? Do you think he will raise you to the level of the pope? I think he would not—but if he did, could you hope more privilege than he has left his holiness? And what privilege has he left him? He has reduced his religion to be a mendicant for contemptuous toleration, and he has reduced his person to beggary and to rags. Let me ask you a further question. Do you think he would feel any kind-hearted sympathy for you? Answer yourselves by asking—what sympathy does he feel for Frenchmen, whom he is ready by thousands to bury in the ocean, in the barbarous gambling of his wild ambition? What sympathy then could bind him to you? He is not your countryman—the scene of your birth and your childhood is not endeared to his heart by the reflection that it was also the scene of his. He is not your fellow christian—he is not, therefore, bound to you by any similarity of duty in this world, or by any union of hope beyond the grave. What then could you suppose the object of his visit, or the consequence of his success? Can you be so foolish as not to see that he would use you as slaves while he held you; and that when he grew weary, which he would soon become of such a worthless and precarious possession, he would carry you to

market, in some treaty of peace, barter you for some more valuable concession, and surrender you, to expiate, by your punishment and degradation, the advantage you had given him by your follies and your crimes

There is another topic on which a few words might be addressed to the deluded peasant of this country—he might be asked, what could you hope from the momentary success of any effort to subvert the government by mere intestine convulsion? Could you look forward to the hope of liberty or property? You see the characters, the capacities, and the motives of those that have embarked on those different subjects—you see them a despicable gang of needy adventurers—desperate from guilt and poverty—uncountenanced by a single individual of probity or name—ready to use you as the instruments, and equally ready to abandon you, by treachery or flight, as the victims of their crimes. For a short interval, murder and rapine might have their sway; but don't be such a fool as to think, that though robbing might make a few persons poor, it could make many persons rich. Don't be so silly as to confound the distinction of property with the partition of wealth. Small must be your share of the spoil, and short the enjoyment of it. Soon, trust me, very soon, would such a state of things be terminated by the atrocities of its authors. Soon would you find yourselves subdued, ruined, and degraded. If you looked back, it would be to character destroyed—to hope extinguished. If you looked forward, you could see only the dire necessity you had imposed upon your governors of acting towards you with no feelings but those of abhorrence and of self-preservation—of ruling you by a system of coercion, of which alone you would be worthy—and of loading you with taxes (that is, selling the food and raiment which your honest labour might earn for your family) to defray the expense of that force by which only you could be restrained.

Say not, gentlemen, that I am inexcusably vain when I say, would to God that I had an opportunity of speaking this plain, and, I trust, not absurd language to the humblest or-

ders of my countrymen. When I see what sort of missionaries can preach the doctrines of villany and folly with success, I cannot think it very vain to suppose that they would listen with some attention and some respect to a man who was addressing some plain sense to their minds, whose whole life ought to be a pledge for his sincerity and affection—who had never, in a single instance, deceived, or deserted them, or betrayed them—who had never been seduced to an abandonment of their just rights, or a connivance at any of their excesses, that could threaten any injury to their character.

But perhaps, said Mr. Curran, I have trespassed too much upon your patience by what may appear a digression from the question. The motive of my doing so, I perceive, by your indulgent hearing, you perfectly comprehend. But I do not consider what I have said as a mere irrelevant digression, with respect to the immediate cause before you. The reasoning comes to this: the present state of this country shows that nothing could be so stupidly and perversely wicked as a project of separation, or of French connection—and, of course, nothing more improbable than the adoption of such a useless project. If it be then so senseless, and therefore so improbable, how strong ought the evidence to be, on which you would be warranted in attesting, on your oaths, to England and to France, so odious an imputation on the good sense and loyalty of your country. Let me advert again to the evidence which you have heard to support so incredible a charge. I have already observed on the contemptible smallness of the number—a few drunken peasants assemble in the streets; there, in the fury of intoxication, they commit such atrocities as no man can be disposed to defend or to extenuate; and having done so, they fly, because a few peace-officers, aided by the gallantry of Mr. Justice Drury—who, even if he did retreat, as has been insinuated, has at least the merit of having no wish to shed the blood of his fellow christians, and certainly is entitled to the praise of preserving the life of a most valuable citizen and loyal subject.

In this whole transaction no attempt, however feeble or ill directed, is made on any place belonging to, or connected with, the government. They never even approach the barrack, the castle, the magazines. No leader whatever appears; nothing that I can see to call for your verdict, except the finding the bill, and the uncorroborated statement of the Attorney-General. In that statement, too, I must beg leave to guard you against one or two particulars: As to what he said of my Lord Kilwarden, it was not unnatural to feel as he seemed to do at the recollection, nor to have stated that sad event, as a fact that took place on that occasion—but I am satisfied he did not state it with the least intention of agitating your passions, or letting it have the smallest influence on your judgment in the inquiry into a charge of high treason. I must beg leave also to say that no recital in any statute is any evidence whatsoever of the existence of any particular fact of treason or treasonable conspiracy. I must further desire you to blot from your minds the reference which he was pleased to make to the verdict of yesterday—and, in truth, when I see the evidence on which you are to decide reduced to what is legal or admissible, I don't wonder that Mr. Attorney-General himself should have treated this doughty rebellion with the laughter and contempt it deserved.

Where now is this providential escape of the government and the castle? Why simply in this, that nobody attacked either the one or the other; and that there were no persons that could have attacked either. It seems not unlike the escape which a young man had of being shot through the head at the battle of Dettingen, by the providential interference by which he was sent twenty miles off on a foraging party ten days before the battle.

I wish from my heart that there may be now present some worthy gentlemen who may transmit to Paris a faithful account of what has this day passed—if so, I think some loyal

absentee may possibly find an account in the *Publiciste* or *Moniteur* somewhat in this way :—

“ On the 23d of July last a most splendid rebellion displayed her standard in the metropolis of Ireland, in a part of the city, which, in their language, is called the *Poddle*. The band of heroes that came forth at the call of patriotism, capable of bearing arms, at the lowest calculation must have amounted to little less than *two hundred persons*.* The rebellion advanced with a most intrepid step till she came to the site of the old Four Courts and Tholsel. There she espied a decayed pillory, on which she mounted in order to reconnoitre, but she found, to her great mortification, that the rebels had staid behind. She therefore judged it right to make her escape, which she effected in a masterly manner down *Dirty-lane* ; the rebels at the same time retiring in some disorder from the *Poddle*, being hard pressed by the poles and lanterns of the watchmen, and being additionally galled by *Mr. Justice Drury*, who came to a most unerring aim upon their rear, on which he played without any intermission, with a spy-glass from his dining-room window—*Raro antecessentem scelestum desivit pæna pede clauda*.* It is clearly ascertained that she did not appear in her own clothes, for she threw away her regimental jacket before she fled, which has been picked up, and is now to be seen at Mr. Carleton's at sixpence a head for grown persons, and threepence, for a nurse and child ! It was thought at first to be the work of

* From all concurrent testimonies, it appears that the insurgents did not amount to more than *three hundred* men, ill armed, and worse disciplined. With this contemptible number a great revolution was to be effected in the midst of a city containing 200,000 inhabitants, in the face of a garrison of 10,000 soldiers, an army of 50,000 strong, and a formidable artillery, backed by all the power and influence of a long established government ! —*Quis talia fûndo temperet æ lacrymis ?*

* The justice unfortunately has a lame leg. This, perhaps, may account for his shyness on the night of the insurrection.

an *Irish* artist, who might have taken measure in the absence of the wearer, but, by a bill and receipt found in one of the pockets, it appears to have been made by the actual body tailor of her august highness the consort of the first consul. At present it is but poorly ornamented, but it is said the Irish Volunteers have entered into a subscription to *trim* it, if ever it shall be worn again."

Happy, most happy is it for these islands, that these rumours which are so maliciously invented and circulated to destroy our confidence in each other, to invite attack and dispirit resistance, turn out on inquiry to be so ludicrous and contemptible, that we cannot speak of them without laughter, or without wonder that they did not rather form the materials of a farce in a puppetshow, than of a grave prosecution in a court of justice.

Mr. Curran said there was still another topic, material to remind the jury of—this was the first trial for treason that occurred since the union of these islands. He said no effectual union could be achieved by the mere letter of a statute; don't imagine, said he, that bigotry could blend with liberality, or barbarism with cultivation. If you wish to be really united with Great Britain, teach her to respect you, and do so by showing her that you are fit subjects of wholesome laws—by showing her that you are capable of rising to a proud equality with her in the exercise of social duties and civil virtues, as many parts of the globe has proved you to be in her fleets and her armies—show her that you can try this cause as she would try it; that you have too much sense and humanity to be borne away in your verdict by despicable panic or brutal fury—show her that in prosecutions by the state, you can even go a step beyond her, and that you can discover and act upon those eternal principles of justice, which it has been found necessary in that country to enforce by the coercion of law: you cannot, said he, but feel that I allude to their statute that requires two witnesses in treason. Our statute does not contain that provision; but if it was

wise to enact it there as a law, it cannot be other than wise to enact it here as a principle; unless you think it discreet to hold it out as your opinion, that the life of a man is not as valuable here, and ought not to be as secure, as in the other part of the empire; unless you wish to prove your incapability of equal rights and equal liberty with Britain, by consigning to the scaffold your miserable fellow subject, who, if tried in England on the same charge, and the same evidence, would be entitled to a verdict of acquittal. I trust you will not so blemish yourselves; I trust you will not be satisfied even with a cold imitation of her justice; but that, on this occasion, you will give her an example of magnanimity, by rising superior to the passion or the panic of the moment. If, in any ordinary case, or in any ordinary time, you have any reasonable doubt of guilt, you are bound by every principle of law and justice to acquit. But I would advise you, at a time like this, rather to be lavish than parsimonious in the application of that principle; even though you had the strongest suspicion of his culpability, I would advise you to acquit. You would show your confidence in your strength, that you felt your situation too high to be affected in the smallest degree by the fate of so insignificant an individual. Turn to the miserable prisoner himself, tainted and blemished as he possibly may be, even him you may retrieve to his country and his duty, by a salutary effort of seasonable magnanimity. You will inspire him with reverence for that institution, which knows when to spare and when to inflict, and which, instead of sacrificing him to a suspicion of his criminality, is determined, not by the belief, but by the possibility of his innocence, and dismisses him with indignant and contemptuous mercy.

The prisoner's defence was weak and ineffectual—the jury found him guilty—and the judge, Mr. Baron George, addressed him nearly as follows:

Owen Kirwan, after a full and patient hearing—after a most minute and impartial investigation of the charge preferred against you, you have been convicted of high treason,

It appears you were a dealer in old clothes, and used the semblance of industry to the most wicked and destructive purpose—a purpose which, could you and your unprincipled and cruel associates effect, would dry up all the sources of industry, confound all order, destroy all security, and leave your country a hideous ruin. It appears that you were an active emissary of rebellion, and had obtained, by that activity, the rank of a leader. You were not of the multitude of devoted victims who are led to slaughter, and plunged in crime, by imposition on their ignorance and their passions. You seemed perfectly aware of what you were about, well acquainted with the plan and views of rebellion, and engaged in it with cool deliberation, and systematic wickedness.

You were coolly tried, and ably defended—that defence was heard with patience, and you have had every advantage possible to be derived from the laws, more tender of the life of the subject, and all the rights attached to society, than those of any other country upon the face of the earth; and surely, when the excellence of those laws are considered, the protection they afford, and the pure and rational freedom enjoyed under our *unequalled* constitution, it is truly astonishing how any man, or body of men, could be found, meditating or attempting the destruction of so beautiful a system! It would be incredible, if proofs the most melancholy were not furnished of the contrary, that such men could be found living under the dominion of a sovereign who has given to his people, and peculiarly the people of this country, forty-three years' experience of the most exalted virtues, and the most parental anxiety for their happiness and welfare. But if insensible to the beauties of our constitution, and the allegiance which wisdom and goodness should have endeared to you and your associates in crime, it is wonderful how you could be so insensible to your own safety—so wretchedly insane as to think, but for one moment, that you could seize upon a government fenced round by such impregnable support, such great wealth and power; such loyalty in the peo-

ple; and such great armies, formidable in number, in discipline, and in bravery. How is it possible that you could be so mad as to think that any rabble insurrection could disturb a government not undefined, nor its members unknown? An amiable and virtuous viceroy, the faithful representative of his sovereign's goodness, is open to access, and visible to those he governs; every member of his administration is the same; none are ashamed or afraid to show their honest fronts to the mid-day sun.

Owen Kirwan, I most earnestly exhort you to use the time allotted to you in this world, in sincere and penitent endeavours to reconcile your soul to that God, before whose awful judgment-seat it is to appear so soon; think only of your salvation as a contrite christian should, and do not leave this world with a lie in your mouth, and go before your maker, swaggering in vain and boastful guilt. Believe me, unhappy man, that to disclose all you know, and thus make to your injured country and offended God all the atonement in your power, will prove an inexpressible consolation to you in your last moments, and infuse into your soul that sweet consciousness of right, which can alone qualify the bitter draught you are about to take, and justify a hope of future pardon and happiness.

Sentence of death was then passed on the prisoner, and he was accordingly executed the next day.

THE TRIAL

OF ROBERT EMMET, ESQ. FOR HIGH TREASON.

SPECIAL COMMISSION.

WEDNESDAY, SEPTEMBER, 14, 1803.

THIS day Mr. Emmet was put to the bar, and arraigned on the following

INDICTMENT.

County of the City of Dublin, } THE jurors for our lord the
to wit, } king, upon their oath, present
that Robert Emmet, late of Thomas-street, in the city of
Dublin, Esq. being a subject of our said lord the now king,
not having the fear of God in his heart, nor weighing the
duty of his allegiance, but being moved and seduced by
the instigation of the devil, as a false traitor against our
said lord the now king, his supreme, true, lawful, and un-
doubted lord, the cordial love and true and due obedience
which every true and dutiful subject of our said sovereign
lord the king towards him our said lord the king should bear
wholly withdrawing, and contriving and intending the peace
and tranquillity of this kingdom to disquiet, molest, and disturb,
and the government and constitution of this realm to change,
subvert, and alter, and our said lord the king from the royal

state, title, honour, power, imperial crown and government of this kingdom to depose and deprive, and our said lord the present king to death and final destruction to bring and put, he the said Robert Emmet, on the 23d day of July, in the 43d year of the reign of our said lord the king, at Thomas-street, in the city of Dublin aforesaid, with force and arms, falsely, wickedly, and traitorously did compass, imagine, and intend our said lord the king then and there his supreme, true and lawful lord of and from the royal state, crown, title, power and government of this realm to depose and wholly deprive, and our said lord the king to kill and put to death.

To this indictment were added two *counts*, and fifteen *overt acts*.

To this indictment Mr. Emmet pleaded not guilty—and, on being asked if he was ready for his trial, he requested it should be postponed till the following Monday.

MONDAY, SEPTEMBER 19, 1803.

Mr. Emmet was again put to the bar, and the panel having been called over, he peremptorily challenged 20, and showed cause why another should not be sworn, namely, that he was not a freeholder: after a few had been set aside by the crown, the following jury was sworn:

John Geale,	Wm. G. Galway,
John Dickson,	Cha. Hart,
Robert Turbit,	Benj. Holmes,
Dan. Kinahan,	John Lloyd,
Bever Beauhanan,	Walter Lock,
Wm. Davis,	Tho. Palmer.

The Attorney-General then addressed the court and jury in substance as follows:

It is my duty, said he, to state as concisely as I can, the nature of the charge which has been preferred against the prisoner at the bar; and also the nature of the evidence which

will be produced to substantiate that charge. It will require upon your part the most deliberate consideration, because it is not only the highest crime of which at all times the subject can be guilty, but it receives, if possible, additional aggravation, when we consider the state of Europe, and the lamentable consequences which revolution has already brought upon it.

Perhaps at former periods some allowance might be made for the heated imaginations of enthusiasts; perhaps an extravagant love of liberty might for a moment supersede a rational understanding, and men might be induced, from want of sufficient experience or capacity, to look for that liberty in revolution. But sad experience has taught us that modern revolution is not the road to liberty. It throws the mass of the people into agitation, only to bring the worst and most profligate to the surface. It originates in anarchy, proceeds in bloodshed, and ends in cruel and unrelenting despotism. Therefore, gentlemen, the crime of which the prisoner stands charged demands the most serious and deep investigation, because it is in its nature a crime of the blackest dye, and which, under all existing circumstances, does not admit of a momentary extenuation.

Here Mr. Attorney described the law of treason, as defined by the statute 25 Edw. III. He said that the indictment was grounded upon three clauses; the first relates to compassing and imagining the death of the king—the second in adhering to his enemies—and the third to compassing to levy war against him.

Gentlemen, said he, upon former occasions, persons were brought to the bar of this court, implicated in the rebellion, in various though inferior degrees; but if I am rightly instructed, we have now brought to the bar of justice, not a person who has been seduced by others, but a gentleman to whom the rebellion may be traced, as the origin, the life, and the soul of it. If I mistake not, it will appear that some time before christmas last the prisoner, who had visited foreign

countries, and who, for several months before, had made a continental tour, embracing France, returned to this country, full of those mischievous designs which have been now so fully exposed. He came from that country, in which he might have learned the necessary effects of revolution; and therefore if he be guilty of the treason, he embarked in it with his eyes open, and with a previous knowledge of all its inevitable consequences. But notwithstanding, I am instructed that he persevered in fomenting a rebellion, which, I will be bold to say, is unexampled in any country, ancient or modern; a rebellion which does not complain of any existing grievances, which does not flow from any immediate oppression, and which is not pretended to have been provoked by our mild and gracious king, or by the administration employed by him to execute his authority. No, gentlemen, it is a rebellion which avows itself to cause, not to remove, any evil which the people feel, but to recall the memory of grievances, which, if they ever existed, must have long since passed away. The provocations of 600 years have been ransacked, the sufferings of our ancestors have been exaggerated, our state in former ages, and at various remote times, misrepresented, in expectation of extracting from the whole, something like a provocation to justify a revolution, which at the present hour and moment could have no rational foundation. We live under a constitution which we love; free, affluent, and happy, rebellion can find no incentive in our present condition. We feel the happy effects of beneficial laws; of a just administration of them there is no colour of complaint. But this rebellion is to rise from the ashes of our ancestors, and we are called upon to relinquish our own happiness to vindicate their wrongs; they are represented to have been slaves, and therefore we are called upon not to live contented as freemen. But as there is no motive for rebellion now, neither can it be conciliated hereafter. The manifesto of treason wages eternal war against the British constitution—the resentment of its enemies are implacable—

their resolution is fixed and determined—no kindness shall soothe them—no good administration shall reconcile them—no clemency shall assuage them. Rebels they are at heart, and against the mildest administration of our government they proclaim a perpetual and unrelenting hostility.

Mr. Attorney then at great length went over the whole of the evidence, describing in glowing and high-coloured language, the rash proceedings of the insurgents, their feeble means, and fruitless attempts to effect their purpose.

Gentlemen, I have upon all former occasions felt a considerable anxiety, that any warmth which may be induced by the discharge of my duty, should not lead me to exceed it. I have pressed upon every successive jury, mildness, clemency, and moderation. I am sure, in those feelings, you anticipate any recommendation of mine. I request that nothing which has fallen from me, and which I have stated only with a view of making the mass of evidence intelligible, may have any other operation. My statement is merely intended to make you more readily understand that evidence which shall proceed from others, not to make any impression itself.

If I have said any thing to incite within you an additional indignation against the crime, I am not sorry for having done so; but I do not mean in expressing my horror of the crime to prejudice the criminal; on the contrary, in proportion to the enormity of the offence, should the presumption be that he has not committed it. I must also request, if you have heard before this day of the prisoner's name, that you will endeavour to forget it; the vague and uncertain rumours of popular misrepresentation should be entirely forgotten—that which may have been matter of idle conversation should not work against the prisoner at the awful moment of trial. You have the life of a fellow subject in your hands, and by the peculiar benignity of our laws, he is presumed to be an innocent man until your verdict finds him guilty. But in leaning against a bias, you must not take a direction the other way. If upon the whole we lay such conclusive evidence before you

as no human mind can resist, you will be bound to discharge your duty, and find the prisoner guilty. But in the investigation of that evidence every former feeling of your minds must be discharged—listen with attention—give the prisoner the full benefit of any defence which he may make, and dispassionately consider the nature of his vindication.

But, on the other hand, gentlemen, you have a duty to discharge to your king and to your country. Many victims have fallen, who undoubtedly may not, abstractedly taken, have incurred any very considerable proportion of guilt; men who, incapable of deciding for themselves, have been absorbed in the guilty ambition of others; but if it shall appear that the prisoner was the prime mover of this rebellion, that he was the spring which gave it life and activity, then, I say, no false feeling of pity for the man should warp your judgment, or divert your understanding. I know the progress of every good mind is uniform; it begins with abhorrence of the crime, and ends with compassion for the criminal. I do not wish to strip misfortune of perhaps its only consolation; but it must not be carried so far as to interfere with the administration of public justice; it must not be allowed to separate punishment from guilt: and therefore, if upon the evidence you shall be satisfied that this man is guilty, you must discharge your duty to your king, your country, and to your God. If, on the other hand, nothing shall appear sufficient to affect him, we shall acknowledge that we have grievously offended him, and will heartily participate in the common joy that must result from the acquittal of an innocent man.

EVIDENCE FOR THE CROWN.

John Fleming sworn, deposed, that on the 22d of July, and for the year previous thereto, he had been hostler at the White Bull Inn, Thomas-street, kept by a person named Dillon. The house was convenient to Mass-lane, where the rebel *depot* was, and to which the witness had free and con-

stant access; having been in the confidence of the conspirators, and employed to bring the ammunition and other things. He saw the persons there making pike handles, and heading them with the iron part; he also saw the blunderbusses, firelocks, and pistols in the *depôt*: and saw ball catridges making there. Here the witness identified the prisoner at the bar, whom he saw in the *depôt* for the first time, on Tuesday morning after the explosion in Patrick-street. (That explosion took place on Saturday the 16th.) The witness had opened the gate of the inn yard, which opened into Mass-lane to let out Quigley when he saw the prisoner, accompanied by a man named Palmer; the latter got some sacks from the witness to convey ammunition to the stores; and the prisoner went into the *depôt*, where he continued almost constantly till the evening of the 23d, directing the preparations for the insurrection, and having the chief authority. He heard the prisoner read a little sketch, as the prisoner called it, purporting, that every officer, non-commissioned officer, and private, should have equally every thing they got, and have the same laws as in France. Being asked what they were to share, the prisoner replied, "what they got when they were to take Ireland or Dublin." He saw green uniform jackets making in the *depôt* by different tailors; one of whom was named Colgan. He saw one uniform in particular; a green coat laced on the sleeves and skirts, &c. and with gold epaulets, like a general's dress. He saw the prisoner take it out of a desk one day, and show it to all present; (here the witness identified the desk, which was in court;) he also saw the prisoner, at different times, take out papers and put papers into the desk; there was none other in the store; Quigley also used sometimes to go to the desk. On the evening of the 23d of July, witness saw the prisoner dressed in the uniform above described, with white waistcoat and pantaloons, new boots, and cocked hat, and white feather. He had also a sash on him, and was armed with a sword and case of pistols. The prisoner called for a big coat, (but did

net got it,) to disguise his uniform, as he said, until he went to the party that was to attack the castle. Quigley and a person named Stafford, had uniforms like that of Emmet, but that they had only one epaulet. Quigley wore a white feather and Stafford a green one. Stafford was a baker in Thomas-street. About 9 o'clock the prisoner drew his sword, and called out, "come on boys!" he sallied out of the *dépôt* accompanied by Quigley and Stafford, and about 50 men, as well as the witness could judge, armed with pikes, blunderbusses, pistols, &c. They entered Dirty-lane, and went from thence into Thomas-street. The prisoner was in the centre of the party. They began to fire in Dirty-lane, and also when they got into Thomas-street, the witness was with the party. The prisoner went, in the stores, by the name of Ellis. He was considered by all of them as the general, and the head of the business; the witness heard him called by the title of general. In and out of the *dépôt* it was said, that they were preparing to assist the French, when they landed. Quigley went, in the *dépôt* by the name of Graham.

Terence Colgan, the tailor mentioned in the foregoing evidence, being sworn, deposed, that on the Sunday previous to the insurrection, he came to town from Lucan, where he lived; and having met with a friend, they went to Dillon's, the White Bull Inn, in Thomas-street, and drank until the witness, overcome with liquor, fell asleep, when he was conveyed, in this state of insensibility, into the *dépôt* in Mass-lane, and when he awoke the next morning, he was set to work making green jackets and white pantaloons. He saw the prisoner there, by whose directions every thing was done, and who, he understood, was the chief. He recollected seeing the last witness frequently in the *dépôt* while he was there. He also saw the prisoner often at a desk writing. The witness corroborated the general preparations of arms, ammunition, &c. for the insurrection.

A number of other evidences were examined, all corrobora-

reading the aforesaid statements. We think it necessary only to add the following :

Major Sirr examined by the Attorney-General.

Q. Did you arrest any person in August last, at the house of a Mrs. Palmer, in Harold's-Cross ?

A. I did, the prisoner at the bar. I heard that there was a strange, suspicious kind of man, who lodged in the back parlour. I sent a man before me, about 6 o'clock in the evening, to give a single rap at the door ; when it was opened, I rushed in, and found the prisoner, Mrs. Palmer, and her daughter, sitting at their dinner ; I gave him in charge to the man who accompanied me, and went into the next room with Mrs Palmer, to interrogate her relative to the prisoner, whose name she said was Hewit, and that he was a very proper young man ; the prisoner told me that his name was Cunningham. I went to the prisoner and asked him how long he had been in the house ? and he said that he only came there that morning. I saw him bloody, and learned that he had attempted to make his escape. I went again to Mrs. Palmer, and she told me he had been in the house for a month. I saw a manuscript paper upon the chair in the room where the prisoner lodged, and put it in my pocket. I then went to Harold's-Cross bridge, and beckoned to a guard of soldiers, who were waiting for a signal to attend me, in case I should want their assistance ; I placed a sentinel over the prisoner, and placed others about the house and garden. I went again to Mrs. Palmer, and took her account in writing ; and hearing a noise, I went to the back of the house, and saw the prisoner running down the garden ; I called to the sentinel to fire, (not choosing to suffer an escape,) at the same time pursuing the prisoner, and when I came near him, he turned round and said, I surrender. In the mean time, the soldier attempted to fire, but his piece did not

go off. I then searched the prisoner, and found some papers about him. Seeing that he had been hurt, I apologized to him for the necessity I was under of treating him with such severity. He replied, "all is fair in war." When he was brought to the castle, he admitted that his name was Robert Emmet. Major Sirr then identified the papers found upon the prisoner, and that found upon the chair in his room. Some objections were made to the reading of this latter paper, upon the grounds that people had access to the room; but they were overruled. The case of Lord Russel was cited, in which it appeared, that papers found in his room were received as evidence. Here the papers were read, and the case closed on behalf of the crown.

Mr. McNally said he was instructed by the prisoner to tell their lordships, that he would not trouble the court with any defence, and that, as he did not himself mean to make any observations, he conceived the case on both sides rested with their lordships and the jury. He said he apprehended that, when the counsel for the crown spoke to evidence, it was in the nature of a reply; and as he, the counsel for the prisoner, did not intend to make any observations, there was nothing to reply to. But Mr. Plunket contending for his right to speak, he accordingly addressed the court and jury in a very long speech, to the following purport:

You need not entertain any apprehension, that, at this hour of the day. I am disposed to take up a great deal of your time, by observing upon the evidence which has been given. In truth, if this were an ordinary case, and if the object of this prosecution did not include some more momentous interests than the mere question of the guilt or innocence of the unfortunate gentleman who stands a prisoner at the bar, I should have followed the example of his counsel, and should have declined making any observations upon the evidence. But, gentlemen, I do feel this to be a case of infinite importance indeed. It is a case important, like all others of this kind, by involving the life of a fellow subject; but it is doubly

and tenfold important, because, from the evidence which has been given in the progress of it, the system of this conspiracy against the laws and constitution of the country has been developed in all its branches; and, in observing upon the conduct of the prisoner at the bar, and in bringing home the evidence of his guilt, I am bringing home guilt to a person, who, I say, is the centre, the life-blood and soul of this atrocious conspiracy. [Here Mr. Plunket recapitulated the whole of the evidence, with remarks on each part.]

Gentlemen, with regard to this mass of accumulated evidence, forming irrefragable proof of the guilt of the prisoner, I conceive no man, capable of putting together two ideas, can have a doubt. Why then do I address you, or why should I trespass any longer on your time and your attention? Because, as I have already mentioned, I feel this to be a case of great public expectation—of the very last national importance; and because, when I am prosecuting a man in whose veins the very life-blood of this conspiracy flowed, I expose to the public eye the utter meanness and insufficiency of its resources. What does it avow itself to be? A plan not to correct the excesses, or reform the abuses of the government of the country; not to remove any specks of imperfection which might have grown upon the surface of the constitution, or to restrain the overgrown power of the crown, or to restore any privilege of parliament, or to throw any new security around the liberty of the subject. No—but it plainly and boldly avows itself to be a plan to separate Great Britain from Ireland, uproot the monarchy, and establish “a free and independent republic in Ireland,” in its place! To sever the connection between Great Britain and Ireland! Gentlemen, I should feel it a waste of words and of public time, were I addressing you, or any person within the limits of my voice, to talk of the frantic desperation of the plan of any man who speculates upon the dissolution of that empire whose glory and whose happiness depends upon its indissoluble connection. But were

it practicable to sever that connection—to untie the links which bind us to the British constitution, and to turn us adrift upon the turbulent ocean of revolution, who could answer for the existence of this country, as an independent country, for a year? God and nature have made the two countries essential to each other—let them cling to each other to the end of time, and their united affection and loyalty will be proof against the machinations of the world.

But how was this to be done?—By establishing “a free and independent republic!”—high sounding names!—I would ask whether the man who used them understood what they meant?—I will not ask what may be its benefits, for I know its evils. There is no magic in the name. We have heard of “free and independent republics,” and have since seen the most abject slavery that ever groaned under iron despotism growing out of them.

Formerly, gentlemen of the jury, we have seen revolutions effected by some great call of the people ripe for the change, and unfitted by their habits for ancient forms; but here, from the obscurity of concealment, and by the voice of that pigmy authority, self-created, and fearing to show itself but in the arms and under cover of the night, we are called upon to surrender a constitution which has lasted for a period of one thousand years.* Had any body of the people come forward, stating any grievance, or announcing their demand for a change?—No; but while the country is peaceful, enjoying the blessings of the constitution, growing rich and happy under it, a few desperate, contemptible adventurers in the trade of revolution form a scheme against the constituted authorities of the land, and attempt by force and violence to overthrow an ancient and venerable constitution, and to plunge a whole people into the horrors of civil war!

If the wisest head that ever lived had framed the wisest system of laws which human ingenuity could devise—if he were satisfied that the system were exactly fitted to the dis-

* Here Mr. P. must have spoken metaphorically.

position of the people for whom he intended it; and that a great proportion of that people were anxious for its adoption, yet give me leave to say that under all these circumstances of fitness and disposition, a well judging mind, and a humane heart, would pause awhile, and stop upon the brink of his purpose, before he would hazard the peace of the country, by resorting to force for the establishment of his system; but here, in the frenzy of distempered ambition, the author of the proclamation conceives the project of "a free and independent republic"—he at once flings it down, and he tells every man in the community, rich or poor, loyal or disloyal, he must adopt it at the peril of being considered an enemy to the country, and suffering the pains and penalties attendant thereupon.

And how was this revolution to be effected? The proclamation conveys an insinuation that it was to be effected by their own force, entirely independent of foreign assistance. Why? Because it was well known there remained few in this country so depraved, so lost to the welfare of their native land, that would not shudder at forming an alliance with France: and therefore the people of Ireland are told "the effort is to be entirely your own, independent of foreign aid." But how does this tally with the time when the scheme was first hatched: the very period of the commencement of the war with France? How does it tally with the fact of consulting in the *château* about the coöperation with the French, which has been proved in evidence? But, gentlemen, out of the proclamation I convict him of duplicity. He tells the government of the country not to resist their mandate, or think that they can effectually suppress rebellion, by putting down the present attempt, but that "they will have to crush a greater exertion, rendered still greater by foreign assistance." So that upon the face of the proclamation, they avowed, in its naked deformity, the abominable plan of an alliance with the usurper of the French throne to overturn

the ancient constitution of the land, and to substitute a new republic in its place !—

After speaking at great length on the absurd plan of the insurrection, the contemptible numbers that were to effect the revolution, and the atrocious intentions of the conspirators, Mr. Plunket concluded in these words :—Gentlemen, why do I state these facts? Is it to show that the government need not be vigilant, or that our gallant countrymen should relax in their exertions? By no means; but to induce the miserable victims who have been misled by those phantoms of revolutionary delusion, to show them that they ought to lose no time in abandoning a cause which cannot protect itself, and exposes them to destruction, and to adhere to the peaceful and secure habits of honest industry. If they knew it, they have no reason to repine at their lot: Providence is not so unkind to them in casting them in that humble walk in which they are placed. Let them obey the law, and cultivate religion, and worship their God in their own way. They may prosecute their labour in peace and tranquillity; they need not envy the higher ranks of life, but may look with pity upon that vitious despot who watches with the sleepless eye of disquieting ambition, and sits a wretched usurper on the throne of the Bourbons. But I do not wish to awaken any remorse, except such as may be salutary to himself and the country, in the mind of the prisoner. But when he reflects, that he has stooped from the honourable situation in which his birth, talents, and his education placed him, to debauch the minds of the lower orders of ignorant men, with the phantoms of liberty and equality, he must feel that it was an unworthy use of his talents—he should feel remorse for the consequences which ensued, grievous to humanity and virtue, and should endeavour to make all the atonement he can, by employing the little time which remains for him in endeavouring to undeceive them.

Liberty and equality are dangerous names to make use of

—If properly understood, they mean enjoyment of personal freedom under the equal protection of the laws, and a genuine love of liberty inculcates an affection for our friends, our king, and country—a reverence for their lives—an anxiety for their safety, a feeling which advances from private to public life, until it expands and swells into the more dignified name of philanthropy and philosophy. But in the cant of modern philosophy, these affections which form the ennobling distinctions of man's nature are all thrown aside—all the vices of his character are made the instruments of moral good—an abstract quantity of vice may produce a certain quantity of moral good! To a man whose principles are thus poisoned, and his judgment perverted, the most flagitious crimes lose their names—robbery and murder become moral good! He is taught not to startle at putting to death a fellow creature, if it be represented as a mode of contributing to the good of all. In pursuit of those phantoms and chimeras of the brain, they abolish feelings and instincts, which God and nature have planted in our hearts for the good of human kind. Thus by the printed plan for the establishment of liberty and a free republic, murder is prohibited and proscribed; and yet you have heard how this caution against excesses was followed up by the recital of every grievance that ever existed, and which could excite every bad feeling of the heart—the most vengeful cruelty, and insatiate thirst for blood.

Gentlemen, I am anxious to suppose that the mind of the prisoner recoiled at the scenes of murder which he witnessed: and I mention one circumstance with satisfaction—it appears he saved the life of Farrell, and may the recollection of that one good action cheer him in his last moments. But, though he may not have planned individual murders, that is no excuse to justify his embarking in treason, which must be followed by every species of crime. It is supported by the rabble of the country, while the rank, the wealth and the power of the country are opposed to it. Let loose the rabble

of the country from the salutary restraints of the law, and who can take upon him to limit their barbarities? Who can say he will disturb the peace of the world, and rule it when wildest? Let loose the winds of Heaven, and what power less than omnipotent can control them? So it is with the rabble—let them loose, and who can restrain them? What claim, then, can the prisoner have upon the compassion of a jury, because, in the general destruction which his schemes necessarily produce, he did not meditate individual murder? In the short space of a quarter of an hour, what a scene of blood and horror was exhibited! I trust that the blood which was shed in the streets of Dublin upon that night, and that which has since, and may hereafter be shed, upon the scaffold, will not be visited upon the head of the prisoner. It is not for me to say what are the limits of the mercy of God—what a sincere repentance of these crimes may effect; but I do say that if this unfortunate young gentleman retains any of the seeds of humanity in his heart, or possesses any of those qualities which a virtuous education in a liberal seminary must have planted in his bosom, he will make an atonement to his God and his country, by employing whatever time remains to him in warning his deluded countrymen from persevering in their schemes. Much blood has been shed; and he, perhaps, would have been immolated by his followers if he had succeeded. They are a blood-thirsty crew, incapable of listening to the voice of reason, and equally incapable of obtaining rational freedom, if it were wanting in this country, as they are of enjoying it. They embrue their hands in the most sacred blood of the country, and yet they call upon God to prosper their cause, as it is just! But, as it is atrocious, wicked, and abominable, I most devoutly invoke that God to confound and overwhelm it.*

* About the year 1767 the Rev. Mr. Plunket, an eminent dissenting clergyman of the north of Ireland, was called to preside over a congregation in the city of Dublin. This happened in Lord Townshend's time, when a number of first-rate men of genius gave a peculiar brilliancy

Lord Norbury charged the jury, minutely recapitulating the whole of the evidence, and explaining the law.

The jury, without leaving the box, pronounced the prisoner guilty.

The judgment of the court having been prayed upon the prisoner, the clerk of the crown, in the usual form, asked him what he had to say why judgment of death and execution should not be awarded against him according to law?

Mr. EMMET. "I am asked if I have any thing to say why sentence of death should not be pronounced upon me. Was I to suffer only death, after being adjudged guilty, I should bow in silence—but a man in my situation, has not only to combat with the difficulties of fortune, but also with the difficulties of prejudice; the sentence of the law which delivers over his body to the executioner, consigns his character to obloquy. The man dies, but his memory lives; and that mine may not forfeit all claim to the respect of my countrymen, I use this occasion to vindicate myself from some of the charges advanced against me. I am accused of being an emissary of France: 'tis false! I am no emissary; I do not wish to deliver my country to any foreign power, and least of all to France. No! never did I entertain the idea of establishing French power in Ireland. I did not create the rebellion for France, but for liberty:—God forbid! On the contrary, it is evident from the introductory paragraph of the Address of the Provisional Government, that every hazard attending an independent effort was deemed preferable to the more fatal risk of introducing a French army into the country. When

to that facetious nobleman's administration. Mr. Plunket, with great independence of political sentiment, was remarkable for his wit and vivacity, which brought him into the notice of the most eminent personages of the nation of both parties, by whom he was much admired. He had three sons; one a lawyer, another a physician, and the third was a merchant in this country. The counsellor, soon after he delivered the above philippic, was made solicitor-general, and is now on the high road to all the honours and emoluments of the law.

the fluctuating spirit of *French* freedom was not fixed and bounded by the chains of a *military* despot, it might have been an excusable policy to have sought the assistance of France, as was done in the year 1798—then it might not have been so great a hazard to have accepted of French aid under a guaranteeing treaty, such as Franklin obtained for America. But in the present day, could the Provisional Government have formed such a plan, they would have exhibited such a proof of mental imbecility as to unfit them for the common offices of life. Small would be our claims to patriotism and to sense, and palpable our affectation of the love of liberty, if we were to encourage the profanation of our shores by a people who are slaves themselves, and the unprincipled and the abandoned instruments of imposing slavery on others. If such an inference is drawn from any part of the proclamation of the Provisional Government, it calumniates their views, and is not warranted by the fact. How could they speak of freedom to their countrymen—how assume such an exalted motive, and meditate the introduction of a power which has been the enemy of freedom in every part of the globe? Reviewing the conduct of France to other countries; seeing how she has behaved to Italy, to Holland, and to Switzerland, could we expect better conduct towards us? No!—Let not then any man attain my memory by believing that I could have hoped freedom through the aid of France, and betrayed the sacred cause of liberty, by committing it to her most determined foe. Neither let any man hereafter abuse my name, or my principles, to the purpose of so base and wicked a delusion. O! my countrymen, believe not those who would attempt so parricidal an imposition upon your understandings. Deliver my country into the hands of France! What! meditate such a cruel assassination of her political life! Had I done so, I had not deserved to live; and dying with such a weight upon my character, I had merited the honest execration of that country which gave me birth, and to which I would have given

freedom. Had I been in Switzerland I would have fought against the French, for I am certain the Swiss are hostile to the French. In the dignity of freedom I would have expired on the threshold of that country, and they should have entered it only by passing over my lifeless corse. Is it then to be supposed that I should be slow to make the same sacrifice to my native land? Am I, who lived but to be of service to my country—who resigned for that service the worship of another idol I adored in my heart, and who would subject myself to the bondage of the grave to give her independence—am I to be loaded with the foul and grievous calumny of being an emissary of France? My lords, it may be part of the system of angry justice to bow a man's mind by humiliation to meet the ignominy of the scaffold; but worse to me than the scaffold's shame, or the scaffold's terrors, would be the imputation of having been the agent of French despotism and ambition; and while I have breath, I will call upon my countrymen not to believe me guilty of so foul a crime against their liberties and their happiness. Though you, my lord, sit there a judge, and I stand here a culprit—yet you are but a man, and I am another; I have a right, therefore, to vindicate my character and motives from the aspersions of calumny; and, as a man to whom fame is dearer than life, I will make the last use of that life in rescuing my memory from the afflicting imputation of having been an emissary of France, or seeking her interference in the internal regulations of our affairs. Did I live to see a French army approach this country, I would meet it on the shore, with a torch in one hand and a sword in the other—I would receive them with all the destruction of war! I would animate my countrymen to immolate them in their very boats before our native soil should be polluted by a foreign foe. If they succeeded in landing, I would burn every blade of grass before them—raze every house—contend to the last for every inch of ground—and the last spot in which the hope of freedom should desert me, that spot would I make my

grave! What I cannot do, I leave a legacy to my country, because I feel conscious that my death were unprofitable, and all hope of liberty extinct, the moment a French army obtained a footing in this island."

[*Such are the words which were put into Mr. Emmet's mouth by the publication from which we have extracted the foregoing two trials—what follows has been sent to us as the genuine speech of that unfortunate gentleman. In the whole of these trials, we have impartially given both sides of the question as far as the limits of the work would permit; we therefore lay both the speeches before our readers, who may prefer or reject according to their own interests or inclinations. We are inclined to believe that the latter is much nearer the truth than the former; indeed, it evinces a strong degree of authenticity from the lofty ideas, the emphatical language, and the known sentiments of this undaunted champion of the liberty of his country.*]

MR. EMMET. "What have I to say why sentence of death should not be pronounced on me according to law? I have nothing to say that can alter your predetermination, nor that will become me to say with any view to the mitigation of that sentence which you are here to pronounce, and I must abide by. But I have that to say which interests me more than life, and which you have laboured (as was necessarily your office in the present circumstances of this oppressed country) to destroy. I have much to say why my reputation should be rescued from the load of false accusation and calumny which has been heaped upon it.

I do not imagine that, seated where you are, your minds can be so free from impurity as to receive the least impression from what I am going to utter. I have no hopes that I can anchor my character in the breast of a court constituted and trammelled as this is. I only wish, and it is the utmost I expect, that your lordships may suffer it to float down your memories, untainted by the foul breath of prejudice, until it

finds some more hospitable harbour to shelter it from the storms by which it is at present buffeted. Were I only to suffer death, after being adjudged guilty by *your* tribunal, I should bow in silence, and meet the fate that awaits me without a murmur; but the sentence of the law, which delivers my body to the executioner, will, through the ministry of that law, labour, in its own vindication, to consign my character to obloquy—for there must be guilt somewhere; whether in the sentence of the court, or in the catastrophe, posterity must determine. A man in my situation has not only to encounter the difficulties of fortune, and the force of power over minds which it has corrupted or subjugated, but also the difficulties of established prejudice. The man dies, but his memory lives. That mine may not perish, that it may live in the respect of my countrymen, I seize upon this opportunity to vindicate myself from some of the charges alleged against me. When my spirit shall be wafted to a more friendly port; when my shade shall have joined the bands of those martyred heroes who have shed their blood on the scaffold and in the field, in defence of their country and of virtue—this is my hope—I wish that my memory and name may animate those who survive me; while I look down with complacency on the destruction of that perfidious government which upholds its domination by blasphemy of the Most High—which displays its power over men as over the beasts of the forest—which sets man upon his brother, and lifts his hand in the name of God against the throat of his fellow who believes or doubts a little more or a little less than the government standard—a government, which is steeled to barbarity by the cries of the orphans and the tears of the widows which it has made. [*Here Lord Norbury interrupted Mr. Emmet, saying, that the wicked enthusiasts who felt as he did were not equal to the accomplishment of their wild designs.*]

I appeal to the immaculate God—I swear by the throne of Heaven, before which I must shortly appear—by the blood of

the murdered patriots who have gone before me—that my conduct has been through all this peril, and through all my purposes, governed only by the convictions which I have uttered, and by no other view than that of their cure, and the emancipation of my country from the superinhuman oppression under which she has so long and too patiently travailed; and I confidently hope, that wild and chimerical as it may appear, there is still union and strength in Ireland sufficient to accomplish this noblest enterprise. Of this I speak with the confidence of intimate knowledge, and with the consolation that appertains to that confidence. Think not, my lord, I say this for the petty gratification of giving you a transitory uneasiness. A man who never yet raised his voice to assert a lie will not hazard his character with posterity by asserting a falsehood on a subject so important to his country, and on an occasion like this. Yes, my lord, a man who does not wish to have his epitaph written until his country is liberated, will not leave a weapon in the power of envy nor a pretence to impeach the probity which he means to preserve even in the grave to which tyranny consigns him. [*Here he was again interrupted by the judge.*]

Again I say that what I have spoken was not intended for your lordship, whose situation I commiserate rather than envy—my expressions were for my countrymen; if there is a true Irishman present, let my last words cheer him in the hour of affliction. [*Here he was again interrupted by the court.*] I have always understood it to be the duty of a judge, when a prisoner has been convicted, to pronounce the sentence of the law; I have also understood that judges sometimes think it their duty to hear with patience, and to speak with humanity; to exhort the victim of the laws, and to offer, with tender benignity, his opinions of the motives by which he was actuated in the crime of which he had been adjudged guilty—that a judge has thought it his duty so to have done, I have no doubt; but where is the boasted freedom of your institutions—where is the vaunted impartiality

and clemency of your courts of justice, if an unfortunate prisoner, whom your policy, not pure justice, is about to deliver into the hands of the executioner, is not suffered to explain his motives sincerely and truly, to vindicate the principles by which he was actuated?

My lord, it may be a part of the system of angry justice to bow a man's mind by humiliation to the purposed ignominy of the scaffold; but worse to me than the purposed shame, or the scaffold's terrors, would be the shame of such foul and unfounded imputations as have been laid against me in this court. You, my lord, are a judge, I am the supposed culprit—I am a man, you are a man also—by a revolution of power, we might change places, though we never could change characters; if I stand at the bar of this court, and dare not vindicate my character, what a farce is your justice! If I stand at this bar, and dare not vindicate my character, how dare you calumniate it? Does the sentence of death which, your unhallowed policy inflicts on my body, also condemn my tongue to silence, and my reputation to reproach? Your executioner may abridge the period of my existence; but, while I exist, I shall not forbear to vindicate my character and motives from your aspersions; and, as a man to whom fame is dearer than life, I will make the last use of that life in doing justice to that reputation which is to live after me, and which is the only legacy I can leave to those I honour and love, and for whom I am proud to perish. As men, we must appear on the great day at one common tribunal, and it will then remain for the Searcher of all Hearts to show a collective universe who was engaged in the most virtuous actions, or attached by the purest motives—my country's oppressors, or—[*Here he was interrupted, and told to listen to the sentence of the law.*]

My lord, shall a dying man be denied the legal privilege of exculpating himself, in the eyes of the community, of an undeserved reproach thrown upon him during his trial, by charging him with ambition, and attempting to cast away, for

a paltry consideration, the liberties of his country! Why did your lordship insult me?—or, rather, why insult justice in demanding of me why sentence of death should not be pronounced? I know, my lord, that form prescribes that you should ask the question; the form also presumes a right of answering. This, no doubt, may be dispensed with—and so might the whole ceremony of the trial, since sentence was already pronounced at the castle before your jury was empannelled; your lordships are but the priests of the oracle—and I submit to the sacrifice; but I insist on the whole of the forms. [*Here the court desired him to proceed.*]

I am charged with being an emissary of France. An emissary of France! and for what end? It is alleged that I wished to sell the independence of my country! And for what end? Was this the object of my ambition? And is this the mode by which a tribunal of justice reconciles contradictions? No; I am no emissary—my ambition was to hold a place among the deliverers of my country—not in power, not in profit, but in the glory of the achievement! Sell my country's independence to France! and for what? A change of masters? No; but for ambition!

Oh, my country! was it personal ambition that influenced me—had it been the soul of my actions, could I not, by my education and fortune, by the rank and consideration of my family, have placed myself amongst the proudest of your oppressors? My country was my idol—to it I sacrificed every selfish, every endearing sentiment, and for it I now offer up my life. Oh, God! No, my lord, I acted as an *Irishman*, determined on delivering my country from the yoke of a foreign and unrelenting tyranny, and from the more galling yoke of a domestic faction, its joint partner and perpetrator in patriicide, whose rewards are the ignominy of existing with an exterior of splendour, and a consciousness of depravity.

It was the wish of my heart to extricate my country from this doubly rivetted despotism. I wished to place her independence beyond the reach of any power on earth. I wished

to exalt her to that proud station in the world which Providence had destined her to fill.

Connection with France was indeed intended—but only so far as mutual interest would sanction or require; were they to assume any authority inconsistent with the purest independence, it would be the signal for their destruction—we sought aid, and we sought it as we had assurances we should obtain it—as auxiliaries in war, and allies in peace.

Were the French to come as invaders, or enemies, uninvited by the wishes of the people, I should oppose them to the utmost of my strength. Yes, my countrymen, I should advise you to meet them on the beach, with a sword in one hand and a torch in the other. I would meet them with all the destructive fury of war, and I would animate my countrymen to immolate them in their boats before they had contaminated the soil of my country. If they succeeded in landing, and if forced to retire before superior discipline; I would dispute every inch of ground, raze every house, burn every blade of grass—the last spot in which the hope of freedom should desert me, there would I hold, and the last intrenchment of liberty should be my grave. What I could not do myself, in my fall, I should leave as a last charge to my countrymen to accomplish, because I should feel conscious that life, any more than death, is dishonourable when a foreign nation holds my country in subjection.

But it was not as an enemy that the succours of France were to land; I looked, indeed, for the assistance of France. I wished to prove to France and to the world, that Irishmen deserved to be assisted—that they were indignant of slavery, and were ready to assert the independence and liberty of their country. I wished to procure for my country the guaranty which Washington procured for America. To procure an aid which would, by its example, be as important as its valour—disciplined, gallant, pregnant with science and with experience; allies who would perceive the good, and, in our collision, polish the rough points of our character;

they would come to us as strangers and leave us as friends, after sharing in our perils, and elevating our destiny; my objects were not to receive new taskmasters, but to expel old tyrants—these were my views, and these only became Irishmen. It was for these ends I sought aid from France—because France, even as an enemy, could not be more implacable than the enemy already in the bosom of my country! [*Here he was interrupted by the court.*]

(I have been charged with that importance, in the efforts to emancipate my country, as to be considered the key-stone of the combination of Irishmen, or, as your lordship expressed it, “the life and blood of the conspiracy.” You do me honour overmuch—you have given to the subaltern all the credit of a superior; there are men engaged in this conspiracy who are not only superior to me, but even to your own conceptions of yourself, my lord—men before the splendour of whose genius and virtues I should bow with respectful deference, and who would think themselves dishonoured to be called your friends—who would not disgrace themselves by shaking your blood-stained hand—[*Here he was interrupted.*]

What, my lord, shall you tell me, on the passage to that scaffold which that tyranny, of which you are only the intermediary executioner, has erected for my murder, that I am accountable for all the blood that has and will be shed in this struggle of the oppressed against the oppressor—shall you tell me this, and must I be so very a slave as not to repel it?

I, who fear not to approach the Omnipotent Judge, to answer for the conduct of my whole life—am I to be appalled and falsified by a mere remnant of mortality here—by you, too, who, if it were possible to collect all the innocent blood that you have shed, in your unhallowed ministry, in one great reservoir, your lordship might swim in it! [*Here the judge interfered.*]

Let no man dare, when I am dead, to charge me with dishonour—let no man taint my memory, by believing that I could engage in any cause but that of my country's liberty

and independence—or that I could become the pliant minion of power in the oppression or the miseries of my countrymen; the proclamation of the Provisional Government speaks for my views; no inference can be tortured from it to countenance barbarity or debasement at home, or subjection, or humiliation, or treachery, from abroad. I would not have submitted to a foreign invader, for the same reason that I would resist the domestic oppressor. In the dignity of freedom I would have fought upon the threshold of my country, and its enemy should enter only by passing over my lifeless corpse. And am I, who lived but for my country, who have subjected myself to the dangers of the jealous and watchful oppressor, and now to the bondage of the grave, only to give my countrymen their rights, and my country her independence, to be loaded with calumny, and not suffered to resent and repel it? No; God forbid!

If the spirits of the illustrious dead participate in the concerns and cares of those who were dear to them in this transitory life—Oh! ever dear and venerated shade of my departed father, look down with scrutiny upon the conduct of your suffering son, and see if I have even for a moment deviated from those principles of morality and patriotism which it was your care to instil into my youthful mind, and for which I am now to offer up my life.

My lords, you seem impatient for the sacrifice—the blood for which you thirst is not congealed by the artificial terrors which surround your victim: it circulates warmly and unruffled through the channels which God created for noble purposes, but which you are bent to destroy for purposes so grievous, that they cry to Heaven. Be yet patient! I have but a few words more to say. I am going to my cold and silent grave: my lamp of life is nearly extinguished: my race is run: the grave opens to receive me, and I sink into its bosom. I have but one request to ask at my departure from this world; it is the charity of its silence. Let no man write my epitaph; for as no man who knows my motives dare now vin-

dicare them, let not prejudice or ignorance asperse them. Let them and me repose in obscurity, and my tomb remain uninscribed, until other times and *other men* can do justice to my character. When my country takes her place among the nations of the earth, *then*, and not till then, let my epitaph be written.—I HAVE DONE!”

COUNSEL *for the crown*: The Attorney-General, the Solicitor-General, Messrs. Plunket, Mayne, Ridgeway, and O'Grady.

COUNSEL *for Mr. Emmet*: Mr. Burrows and Mr. M'Nally.

In the course of probable events, no one could have supposed that Wm. Cobbet, *alias* Peter Porcupine, (so well known in this country,) could ever have been implicated or concerned, in the most distant degree, with Ireland or Irish rebels—but so it is. This busy man, who loves to fish in troubled waters, be he where he may, published, in his Weekly Register, two libels, calculated, in the language of the Attorney-General, “to excite ill will and hatred amongst his majesty's loyal subjects in Ireland, by insinuating that Ireland is ill governed.” In Peter's coarse and sarcastic manner, amongst other distorted and ludicrous pictures, he represents Lord Hardwicke, the chief governor, as a sheepfeeder with a wooden head; he calls Lord Redesdale, the chancellor, a stout-built chancery pleader: he accuses Mr. Justice Osborne of compounding justice, and Mr. Secretary Marsden of official rapacity, &c. “Under this government,” says he, “our property ~~has~~ been subjected to the plunder of clerks, and our persons exposed to the pikes of the rebels.” It is scarcely necessary to add, that Peter was found guilty of publishing both the libels.

He was then tried on an action brought against him by Mr. Plunket, now solicitor general of Ireland. In this libel,

Mr. Plunket is severely censured for his conduct on the trial of Mr. Emmet, as having spoken with unnecessary acrimony against the son of a gentleman who had been his, Mr. P.'s, friend—the truth is, many people, had conceived, that there was no necessity for his uttering so harsh a philippic against the unfortunate young gentleman, more especially as the counsel for Mr. E. declined speaking in his defence. (See p. 128.) But it appears that Mr. Plunket had an object in view: he did speak with keenness, he obtained his object, and is now on the road to higher preferment, and greater emolument. On this trial, the celebrated Mr. Erskine acted as counsel for the plaintiff, and the jury brought against Peter a verdict of 500*l.* damages.

Upon the whole, it would appear that P. Porcupine is not more comfortable amongst his loyal countrymen in England, than he was with his loyal friends in America.

In addition to the singularity of this affair it is now known that Mr. Justice Johnson, one of the judges of the court of common pleas in Ireland, was concerned in the fabrication of these libels! Mr. Johnson was arrested on such a charge, which will bring on a trial of a most extraordinary nature—a judge publishing libels against government will be a new case for the lawyers—in London.

* * Mr. Curran did not appear in court at Mr. Emmet's trial. The following article may explain: "The daughter of an eminent Irish advocate was arrested near Dublin on Friday last, charged with holding a correspondence with young Emmet!—It appearing, however, that there was nothing treasonable in the letters that passed between them, but sentiments of love and affection, she has since been liberated."

TRIAL AT NISI PRIUS.

MISS MARY FITZGERALD V. REV. THOMAS HAWKESWORTH,
FOR A BREACH OF MARRIAGE CONTRACT.

COURT OF KING'S BENCH.

TUESDAY, MAY 15, 1804.

THIS interesting trial came on before Lord Chief Justice Downes and a special jury—it continued three days.

Mr. Penefather opened the case, by explaining that it was an action brought by the plaintiff, Mary Fitzgerald, against the defendant, the Rev. Thomas Hawkesworth, for a breach of promise of marriage. The damages were laid at 5,000*l.* and the defendant pleaded, 1st. The general issue; 2dly. That he was under age when the promise was made; and, lastly, The statute of limitation. The plaintiff joined issue, particularly in the two last pleas.

Mr. Serjeant Moore stated the plaintiff's case at great length, and with great ability. He commenced by observing that the present was a case calculated to interest manly sensibility, and engage the serious attention and sympathy of every man wishing to maintain the moral and social obligations. The

question with the jury was not, as in ordinary actions, to recover damages; but they were to admeasure the compensation due to wounded feelings and a broken heart. They were called upon to give what atonement could be given to mental agony, to repose for ever lost, and, by their verdict, to check an offence peculiarly reproachful to human nature. They would find the case before them, one in which the duplicity and art of the defendant was commensurate with his professions of affection, and that at the moment he pretended love, he determined to deceive. They would find hypocrisy and love in the same man; enthusiasm and dissimulation, cunning and candour, in the same letters; and in those letters, and under his own hand, they would be able to trace the arts and wiles of the deceitful lover. On the other hand, they would see in the plaintiff, long constancy, continued affection, and undeviating virtue, up to the present moment. They would behold an affecting picture of patience and long suffering, the lady slow to promise, but having promised, most faithful to perform.

This being the general prospectus of the merits of the case, the learned counsel said it became his duty to lay the facts before the jury. The plaintiff was a young lady, now about 36 years of age, living with her family; her father, a most respectable old gentleman, had been a military officer; her brother was now a captain in his majesty's service. The family had been settled for some years back in Castletown, in the Queen's county. Of five children the plaintiff was the eldest. The father of the defendant, Mr. Hawkesworth, inferior to Mr. Fitzgerald in the claims of ancient genealogy, was, however, superior in worldly circumstances, and acted as the manager of Lord Castle-Coote's estates in that county. The defendant, his son, was ordained in the year 1795, and had acquired a considerable share of celebrity as a preacher, and was well known in the pulpits of this metropolis. But whether his practical morality accorded with his precepts would be for the jury to determine. Before the year 1794,

there was naturally an intimacy between the two families, from the proximity of their residences. The defendant was then a student in Trinity College, and was nearly about to take his degrees. He was about 20 years of age, the lady 16. An affection was mutually conceived, and after some difficulty on his part to engage the lady to such a procedure, they became contracted by a solemn vow to end in marriage. Their affection becoming obvious to the surrounding country, then began the defendant's duplicity. He told the young lady that they must keep their sentiments for each other secret; that he wished to be out of college before their marriage took place, for that by and by he would be ordained—and he was ordained the following year, a strong presumption against his nonage. In the year 1794 the defendant wrote three letters to Miss Fitzgerald—the first recommending the renewal of their vows, &c. from whence an intended matrimonial engagement and previous contract were evidently to be inferred. Here the learned counsel quoted from the first letter passages which were nearly as follows:

" My dearest Maria!

" I will not say I was disappointed in not receiving an answer to my letter of yesterday, for, certainly, nothing that you would have written could have added to my affectionate confidence, but I did expect a line or two; they would have been a comfort to me, and would have imposed no trouble upon you. Dearest girl! I hope you are by this time convinced of the sincerity of my love: then why this unaccountable reserve? Perhaps you have yielded to suspicion—but no! your heart is too good to entertain any doubts of one who doats upon you!—You must be confident of my intentions; you must, ere now, have discerned, from my actions and letters, the sincerity of my attachment; you must have seen that my happiness depends on you, and that the gilded object which my hopes pursue, is the enrapturing prospect of calling you mine! *Let us, then, my Angel, mutually promise never to*

depart from our engagement!—Let us, since our love is mutual, agree to unite our families—It would be imprudent to unite them now, but a time will come when it will not be so. As for me I have made sufficient promises and professions before, but now again, in the most solemn manner, I call the ALMIGHTY to witness, that if you consent to engage in the same manner, *that I will never be united to any mortal but you!*—All the powers on earth shall never separate my affections from my Maria, but I will continue her's for ever!—Maria, *my Angel!* without such mutual promises we can never be happy. Though we love ever so sincerely, without such solemn agreement our happiness may be interrupted, but afterwards, not all the powers on earth can separate us. I think I gave you sufficient proofs of the sincerity of my love—give me such, and then, one day or other, our happiness will be out of the power of the world. Say what I say, and convince me of your love. *Oh! my Angel!** once thus engaged, we shall not mind what the world can do to separate us, and we shall be happy. I send you a pocket-book. Keep it for my sake. It can be of use to no one else, as your name is upon it.

P. S. Maria—*my Angel!*—make the promise I require, and you shall see how prudently I will behave—this brings things to the proof. You may depend upon the bearer."

This, continued Mr. Moore, was to prove the constancy of the lady—but you, gentlemen of the jury, will find that constancy proved to this very hour; while the defendant has been seeking, by baseness and hypocrisy, to break off the match at the same time, and imposing upon her gallant brother and respectable father, and disarranging the whole family. Two other letters were written by the defendant to the plaintiff the same year—one of them contains the following passage:

* The word *Angel* caused a general laugh in court—even the judge's features were moved.

"Our love being mutual, my Maria! then why not our declaration? You said I might depend on the sincerity of your love, but this brings it to the proof. Engage solemnly as I did, and it will not be in the power of the world to prevent our union. You must have considered this subject, and plainly see that I can have no view in wishing this solemn declaration, but that we may defy the world. I shall say no more, but that if you make the same declaration, and engage in the same solemn agreement, I call the Almighty to witness, that not all the powers on earth, nor any consideration whatsoever, shall separate us, and that I will never be united to mortal but you."

It will appear by inference, that the young lady could not resist the effect of this letter, and that the defendant procured from her the engagement he sought for. He writes a third letter, dated 27th Feb. 1794, from which this inference is to be made, and in which his deception is perceptible.

"To endeavour to express the pleasure which your charming letter gave me, would be vain as it would be unnecessary. I should be miserable if I thought my Maria was not convinced that she had made me the happiest of mortals. Now, *my own Maria*, now that the engagement is made, all the powers on earth cannot separate us, and the day will come at last which shall make us for ever happy. You know I promised in my last to give you an account of the plan of conduct I mean to adopt, until the day arrives which is to make my lovely girl mine for ever! This I would have done before, but considered it indelicate to have entered into any circumstances concerning my future expectations in life, until you had made me the promise."

Future expectations were no bar until the promise was made, and then were advanced as an excuse for postponement! The engagement made, some explanation took place, and the defendant wrote on the 17th March, 1794, another letter:

"I would have written yesterday, but you were from home,

and people might have remarked on the messenger. You seem to entertain doubts of my sincerity, which, I assure you, are entirely groundless. *My Angel!* do you imagine that any absence can cause an alteration in my sentiments for you? Could I so soon forget the solemn vow I made, 'never to be united to any one but *you*.' This mutual engagement has put it out of the power of the world to separate us. I shall comment no longer on your letter, but to remark, that you seem as if writing to a man of such fickle mind, that he would forget his mistress as he would a ginger-bread baby: but assure yourself that no time, place, or circumstance whatsoever, shall alter my mind, and that I will always love you in the tenderest and most constant manner. Let us now, my lovely Maria! as necessary, conceal our attachment; let us promise solemnly that nothing shall alter that attachment, and that we shall continue to love, under the circumstances of concealment and postponement, with constancy, until the happy time arrives which is to make us one. *I again call God to witness that I will never be united to mortal but you.* In spite of absence I will love with the greatest constancy, and may the Almighty forsake me when I forsake you! This solemn vow must, my Maria, dispel all doubt, and make you confident that I cannot deceive you. I thought it necessary to renew it, and with the same sacred appeal to Heaven, I hope you will do the same for my satisfaction. I request, my lovely girl, you will take care of your health; let nothing make you uneasy, and be assured that your happiness will be the constant study of your ever faithful

"T. HAWKESWORTH."

Gentlemen, while thus recommending her to take care of her health, he was meditating that course of falsehood which was to destroy it, and render her, as she is this day, the most unhappy woman which, in the same rank of life, this country can present to our view. Having secured her affections

beyond retraction, he kept her from the year 1794 to 1801, bound in secrecy, and this amiable and virtuous young woman passed through a pilgrimage of love, without receiving the addresses of any other person, and devoting her heart, her health, and years to constancy. She was most religiously faithful to the cruel injunction of secrecy laid upon her—

“————— She never told her love,
 “But let concealment, like a worm i’ the bud,
 “Feed on her damask cheek: she pin’d in thought;
 “And, with a green and yellow melancholy,
 “She sat, like Patience on a monument,
 “Smiling at grief.”

SHAKESPEARE.*

Faithful though afflicted—the bloom of youth faded—the neighbours began, at length, to say she was neglected—that it was time the contract should be fulfilled—that he had forgotten her; but still she was secret, relying upon the faith and honour of her lover.

Thus, the learned advocate continued, after entrapping my client under the delusive semblance of three awful and most solemn appeals to the Almighty for the truth of his professions, his constancy, and sincerity—appeals registered in glaring capitals, through different letters, which, on the merits of this case, it will rest with you, gentlemen of the jury, to stamp by your verdict as indelible records of the defendant’s disgrace, or the triumphant symbols of his cruel and unrelenting hypocrisy. It was not until after the solemn vow had been exchanged, and flew up to Heaven’s sanctuary for approbation, that this subtle ecclesiastic, under a conscious security in the innocence, the honour and the sacred-

* Our law readers may have perceived the adroit use which Mr. Curran makes of classical quotations; they give dignity (when judiciously introduced) to public speakers. We take the liberty also of advising all orators to read Shakspeare for the same purpose. In the works of that “great master of human nature,” they will find apt and striking passages applicable to every case and circumstance of human life.

ness of that purity and virtue attached to the victim he deliberately destined as the sport of his treachery, that he coolly wrote of prudence, protraction, and postponement of the marriage ceremony—that, with yawning indifference, he informed her how indispensable it was, for many subsequent years, they should but seldom meet, or have any species of intercourse by letter or message. “When I forsake thee, or marry any mortal but you, may God forsake me.” The impious asseveration of almost the preceding day was conveniently forgotten. Blasphemous expedient, to wound the tenderest and most delicate sensibility!—detested stratagem to injure a broken heart!

About the period alluded to, the defendant, in conversation with a gentleman of the name of Seale; vaunted, that he was paying his addresses to a young lady with a fortune of 5,000*l*. The gentleman having previously heard of the indissoluble engagement by which he was bound to marry Miss Fitzgerald, asked, with surprise, how he could, for a moment think of violating so sacred an obligation—to which the divine lightly answered, that it was a juvenile prank, a rash engagement, which he was justified in breaking, and if such assertion could for a moment be doubted, he would convince the incredulous by irrefragable proofs drawn from the scriptures; at all events, he would not marry her, let what would be the consequence!—But still, to preserve the colour of honour, on an interview which the defendant had with two ladies, friends to Miss Fitzgerald, he sent her a message, particularly by a Mrs. Palmer, which he thought would raise an insuperable barrier to their union, and that the objection to the marriage, from their supposed inability to comply with the proposal, must necessarily come from the lady’s own friends. Though highly respectable in point of ancestry, as Captain Fitzgerald, the father of the plaintiff, avowedly is, with a large family, from their rank and situation in life calling for suitable expenses, he was far from circumstances of affluent independence. The defendant therefore conceiv-

ed, that if he had set his price at the impracticable sum of one thousand pounds fortune with the lady, qualifying the proposal as if it was the fixed premium at which his father estimated his consent to the marriage, that the friends of Miss Fitzgerald must relinquish all pretences to the honour of an alliance with him. But it never struck a mind like his, that Miss Fitzgerald, cut off as she might have been from a resource to that amount in her father's family, might still draw for a much greater sum on the affections of an uncle and a brother, to both of whom she was deservedly dear. Mrs. Palmer cheerfully acquiesced with carrying the defendant's proposal to the plaintiff, of fulfilling his engagements with her, on the terms of one thousand pounds fortune. But before she departed on this embassy, her sister, a Mrs. Orr, who was present, sagaciously suspecting the sincerity of the priest, asked him "Whether he would have been better pleased to have his proposal accepted or rejected?"—on which he paused, bit his nails, and grew serious, till, at length, the labouring mountain brought forth a mouse, in a reply, that "he would be quite as well content if the matter had been dropped for ever. He once loved Miss Fitzgerald, but ten years had made a strange alteration in her charms. Instead of being, as she once was, young and handsome, she grew both old and ugly."

Here the counsel read a passage in one of the defendant's letters, to show that the plaintiff was not, unless the change was wrought by *his* conduct, of a description to be called OLD and UGLY.

"Oh! my lovely Maria, the finest woman I could see would only increase my love for you. In what person could I meet such sensibility, goodness, and virtue?—I can never be happy without my own Maria!"

The spirit of indignation which the learned Serjeant displayed, with the torrents of satire and invective he poured forth, want of room prevents us from detailing. He gave a narrative of the various tricks and devices practised by the

reverend divine to retard the match; and screw Miss F.'s friends up to promises and engagements of giving her a greater fortune, particularly her brother the Captain, whereby he lost the opportunity of purchasing a majority in the army. In the course of these various and intricate negotiations, the reverend lover wrote the following letter to his mistress:—

“You desire me, my dearest Maria, to write by this night's post, and I have great pleasure in obeying. Why, my dearest love! agitate yourself about what people say: you may rely upon it that Alick (Captain Fitzgerald) set out from London on Monday last, and will be here by this night's packet, and if so we shall be in the country on Tuesday—write and send me all your commissions.”

Meaning the usual ornaments of dress, &c. on a lady's wedding; and in a subsequent letter he desires her to send him the gage of the fourth finger of her *left* hand, with the measure of her foot for a *nice* pair of shoes. The night following he wrote to her again:

“MY DEAR MARY,

“Since Saturday last I expected your brother—at last he is arrived, after a voyage of eight days. We shall be in the country on Tuesday evening. I shall bring down a special license, and an outline of the settlements, leaving blanks which your father and uncle may fill as they think proper.”

At length when the long expected day arrived, the reverend gentleman again contrived new excuses on account of fortune, and finally pleaded sickness.

Thus, continued the counsellor, throughout a complicated series of wily artifices, did the defendant, without one intervening spark of humanity or compunction, proceed, while coiling himself within the serpentine mazes of more than jesuitical finesse—grasping an unsuspecting victim within his inextricable folds, he darts his adder's sting into the heart softened by sympathy, and with all its affections alive to the impression of these virtues in which, by example in her own

family, as well as pious precepts, she had been invariably reared. But had he the mercy to leave the barb of death transfixed, to fret and feaster according to the physical operations of the poison he had infused? No; he perceived that religious resignation came to her aid, and applied a healing antidote. Discomfited and abashed, like the arch fiend in Milton, he rallies all his powers, and, with complete destruction in his view, under the fallacious theories of Chesterfield, respecting the weakness of the fair sex, rubbing themselves against the tinsel foppery and superficial observation of the manners of the *great*, to which he had been introduced through the patronage of Lord Castle-Coote—he thought that mortified vanity would have given her the *coup de grace*, and that an insidious, unmanly, and insulting reproach, sent by a confidential friend, would have ultimately finished what his smoother artifices failed to accomplish; but, here again, the various meandrings and convolutions of the serpent were eluded, and this amiable sufferer still lives, like Shakspeare's Viola, under all the heart-broken pressure of a concealed, betrothed, and virtuous love.

But, gentlemen of the jury, resumed the advocate, I wonder not at the lassitude I perceive you are affected by—the mind sickens over a narrative of wanton, merciless, and unvaried depravity—I will hasten, therefore, to a conclusion. After a number of letters had passed between Captain Fitzgerald and the defendant, in which the former was consistent with the character he had uniformly maintained in this transaction, since his departure from Malta until this day, being that of the affectionate brother, the man of sense and honour, the gentleman, and the soldier; he was, at length, after the most wearisome and teasing species of trifling, driven to the necessity of writing, in a polite but peremptory style, to the defendant, either to perform his engagements with his sister speedily, or give security that he would do so on the event of getting a living in the church, or on the death of his father, whose consent the defendant still continued to

urge he was hopeless of obtaining. The letter produced an answer from the defendant, dated the 14th of June, 1808, wherein he throws off the mask, and attempts to dissolve his engagement, by a positive refusal to comply with the terms proposed to him.

Gentlemen of the jury, after this it was fruitless to persevere any longer in a course of artifice, and the defendant hid himself to avoid the performance of his engagement. After many vain efforts, on the part of Miss Fitzgerald's relatives to effect their object of bringing matters to a conclusion, Captain Fitzgerald was obliged to attend his military duty. The defendant was called upon, positively, to execute his contract, when he threw off all disguise, and the plaintiff's family was obliged to resort to the present remedy. It now remains for you to teach this *gentleman* the rule which he inculcates from the pulpit, and which forms the second law of our divine religion—"to love our neighbours as ourselves, and to do unto others as we would they should do unto us." You are to punish broken vows, as far as you can to retribute a broken heart, and to exhibit to the world that a conduct like this, not only interests the individual concerned, but the laws, the morals and the religion of the country. The learned counsel here concluded an able statement, which gained him universal applause, from great strength of feeling, many obvious but acute observations, embellished with a bold, nervous, and copious style of elocution, which occupied three hours in the delivery.

Then follows the examination of witnesses on behalf of the plaintiff. We are sorry we cannot insert these examinations on account of their great length; they give many curious particulars of the address and finesse of the reverend lover, who, it appears, could love, and promise, and equivocate, with any *lay gentleman* in the country.

Captain Fitzgerald, in his evidence, after giving an account of the various conversations and negotiations betwixt him and the reverend lover, concerning the fortune that was to accom-

pany the lady, stated, that he met defendant by appointment at the house of Captain John Fitzgerald, at Gosbrook, the witness's uncle, on or about the 23d of May—at this meeting the defendant and witness talked over the business of the marriage, and arranged matters for its celebration—defendant himself promised to get drafts of a settlement made out at 1,000*l.* while he appointed the following Saturday for the marriage—defendant, in the mean while, took occasion to ask witness if he had been remitted the 200*l.* from England which he expected—witness replied he had, and would have the money with him in the country previous to the day of marriage—witness then mentioned to the defendant that the marriage settlements might be as well drawn in the country as in Dublin, and hinted that Mr. Steel, a neighbouring attorney, was a very capable man for that purpose—to this the defendant would not consent, alleging, that there were a set of prating fellows in the neighbourhood, who would immediately take up the idea that he got a fortune without any settlement—witness conceived it could make no possible difference where the settlements were drawn—he told the defendant so, saying he would mention the wishes he expressed, to have them drawn in Dublin, to his uncle, who, he was sure, would gratify him—defendant then asked witness who he thought would be the most eligible clergyman to perform the ceremony? but without waiting a reply, observed, “By G—d, Fitz,* I could perform it myself as well as the best of them.” Witness suggested that Mr. Griffith might marry them—defendant hesitated—said he did not like being married by him—but suddenly remarked, it was immaterial who married them, as he would shortly after the ceremony go to Dublin—wit-

* In the course of this trial, we learn, that the reverend gentleman (who no doubt, kept an eye-glass dangling at his breast) frequently graced his conversation with pretty little oaths! Indeed it is said that young ladies in the fashionable world, who wish to soar above the vulgar, now boldly cook their glasses, and lisp, with inimitable grace, D— me, and by G—d!

mess, as agreed upon, came to Dublin, and procured a draft of the settlement from an attorney. On the Friday following he procured the 200*l.* which he promised, and returned to his father's about 7 or 8 o'clock on the following morning, (Saturday,) the day which the defendant himself had appointed for the nuptials.

Q. Did the defendant keep his appointment?

A. No, he did not—on which I wrote to him, and received a note in answer, stating, slightly, that he had been unwell, and should postpone the marriage until his health was restored. [Note read.] It was dated the 27th of May, and couched in nearly the following words: "My dear Fitz. I received your letter this day, and am sorry to tell you that since your departure I have been extremely unwell, but as I apprehend nothing worse than a severe fit of the influenza, I shall hope to be able to accomplish the object of our dearest wishes in a very few days," &c. &c. After this letter, during three weeks that witness remained in the country, he could not by any chance obtain a sight of defendant—in the interim he wrote defendant a letter, requesting an explanation of his conduct, in avoiding his appointment about the marriage; stating, at the same time, that he did not wish to persist in any thing that might hurt his feelings, but found it requisite to demand a speedy and explicit answer—while he asked if he would fulfil his engagements with his sister when he got a living, or at the death of his father. In the defendant's answer to this letter, he carefully avoided any allusion to his father's death, but seemed to comply with the other alternative, that of fulfilling his engagement when he should get a living. Defendant, during this correspondence, invariably kept within doors—witness received another evasive letter from him, respecting the performance of his promise, on the event of his father's death, but repeated his consent to marry witness's sister when he should be promoted in the church.

The Solicitor-General, Mr. Plunket, rose to state the de-

defendant's case. He observed, that, as the advocate of his client, a double task was imposed on him. The first to screen the defendant, as far as his own humble capacity would tend to such effect, from the impressions sought to have been made on the minds of the jury, in point of damages, through the medium of the great zeal and abilities exerted by the learned Serjeant who stated the plaintiff's case; the next was, to defend the character of a gentleman, embarked in a very solemn and sacred avocation, from the great opprobrium cast upon it through the same zeal, by his learned and eloquent friend, who, doubtless, conceived it his duty to lend the whole energy of his great talents to the exposition of what he was instructed to call fraud, duplicity, dissimulation, and jesuitical finesse. It became his duty not only to remove these heavy aspersions with which the learned gentleman had loaded his client, as to his general character and conduct through life, but to prove to the satisfaction of the court and jury, that the character of his client was not only irreproachable, but pre-eminently respectable—and that his life was dedicated in a superior degree, not only to the successful promulgation of moral precepts, but to the exemplification of such precepts, in contributing to those charitable donations himself—a principle of charity which, from the force of his own benevolent feelings, he was so powerfully calculated to inspire in the breasts of others. These qualities, and that character, he should have hoped most successfully to oppose to that current of invective, which, from its tremendous force, and unexampled velocity, would seem to overwhelm every object that dared to approach it. This expedient, he doubted not, the learned Serjeant had adopted from the most honourable feelings, and from a conscious sense of imperative duty—while, with a master's pencil, he depicted the defendant, in spite of the respect due the sacred function in which he was engaged, as a monster of unprincipled and unvaried libertinism, hypocrisy, fraud and deceit—actuated only by the most cool and deliberate system of effrontery and falsehood.

In violating without compunction or remorse, the most sacred engagements, under a solemn appeal to Heaven, by which one christian being can be bound to another—a serpent, coiling itself in the intricate mazes of premeditated malice against the peace of an innocent unsuspecting female—a reptile, in its subtle progress towards the accomplishment of this nefarious end, to be only traced by the stench it exhaled, or the filth it deposited. But notwithstanding the whole vocabulary of opprobrium, and that with the utmost acrimony of abuse, had been exhausted against his client, whatever the effect might have been on the minds of the jury, he felt it incumbent on him to apprise them, that, as to the measure of whatever damages they should decide against the defendant, be it ever so trifling, the plaintiff may imprison his person—but as to property, *he had none.*

The learned advocate, in recapitulating the commencement and progress of the intimacy between the plaintiff and defendant, while both were in nonage, young and inconsiderate as the youth of both sexes generally are, remarked on the illegality of the contract at the period it was perfected; and while the friends of the lady considered it a hardship to have it, on the part of the defendant, dissolved, he trusted the jury would feel it an equal hardship on the defendant to be bound to it, rashly acceded to as it originally was, without the consent of his father, and all intercourse interrupted for a period of seven years, with the honourable view of obtaining such consent. He strenuously recommended this point to the impartial consideration of the jury, while appreciating damages, and not suffer themselves to be hurried beyond their ordinary faculties of rational discrimination, through the feelings artfully excited by the eloquent statement of his learned friend. The letters of these youthful votaries to Cupid, were also recited by the same learned gentleman, with an appropriate grace of action, and euphony of enunciation. The flame in which these romantic compositions were first engendered, did not seem to be obscured by the lapse of time,

if a judgment might be formed from the fire with which the eloquent gentleman was inspired, in giving these sublime fragments a new and more brilliant creation. He exhibited them, dressed up in all the glowing, effervescent charms of fancy, in all the tinsel lace and embroidery of poetic imagery. The defendant's poor heart was transfixed with every arrow, blunt and pointed, which he could filch from the mischievous quiver of that god who presides over quivers and arrows—"seas of milk, and ships of amber—angels, goddesses, and gingerbread-babies," were all huddled together in one delightful chaos of inexplicable metaphor; and lest these poetic trammels, perhaps religiously purloined from *Amadis de Gaul*, or the *Arabian Nights'* Entertainment, might possibly be dissolved, the lady's fetters were to be gilded with 5,000*l.* at the expense of his client.

From the letters of the defendant to the plaintiff's brother, Mr. Solicitor drew inferences diametrically opposite to the deductions of Mr. Serjeant Moore, asserting that no deliberate breach of contract could be traced throughout the whole series, in every one of which the writer asserted he would, after a little time, while hope remained of obtaining his father's consent, marry Miss Fitzgerald at all events, and, if he got a living, would settle her own fortune on her. It would, therefore, the learned advocate said, be a matter of the most serious consequences to a gentleman of the defendant's rank, avocation, and talents, from all which he might naturally expect honour and preferment in life, and of the most serious consideration with every gentleman among the jury whom he had the honour of addressing, what weight they might give to a hasty extorted engagement of the description before them, or whether, on the ground of such engagement, the character of the defendant shall be held up in these distorted attitudes, and odious shades, that boldness of colouring, and horrible costume, in which he was exhibited by the learned Serjeant, who so freely, not to say extravagantly, depicted him. These colours, postures, and descriptions, the jury, in the

progress of this trial, would perceive could only form subjects of their admiration, as the emanations of an inventive mind, and an eloquent tongue, however impotent in their effects, when applied to stigmatize a man, whose conduct, throughout the whole of this complicated proceeding, bears incontestable marks of honour and probity.

Here follows the examination of the witnesses for the defendant—we make the following extract from the examination of Mr. Hawkesworth, father of the reverend lover:—

John Hawkesworth, Esq. examined by Mr. Ponsonby.

Q. Do you know the defendant in this cause?—A. I do.

Q. Does he stand in any degree of relationship with you?

A. Not in the least!—relationship!—Oh! I beg pardon—he does—he is my son!

Q. Do you know of any marriage your son had in contemplation with the plaintiff, Miss Fitzgerald?—A. I heard of such marriage having been intended by my son.

Q. Did you give your consent to the marriage?—A. I did.

Q. Was that intended marriage agreeable to your wishes, or otherwise?—A. It was always disagreeable to my wishes.

Q. Were you ever at any time induced to agree to such marriage?

A. I was at one time through the importunities of my son.

Q. What determined you to give your consent at that time?

A. Because my son told me he could not live without Miss Fitzgerald, and that he would get a fortune by her.

Q. Pray, Sir, in what circumstances were your son at the time you mention?

A. He had no property independent of me.

Q. Has he any property at present, independent of you?

A. I don't know of any.

Q. You said at one time you were inclined to give your consent to this marriage at your son's solicitation, while he represented he could not live without Miss Fitzgerald—why,

therefore, did you not exert yourself to promote the union of the young couple?

A. Because my son told me there was a promise of a fortune, which I afterwards found would not be performed.

Q. Did you, notwithstanding, continue inclined to consent to the match?

A. I did, until a meeting took place between the young lady's friends and me.

Q. When did that meeting take place?

A. It took place between the 5th and 6th of May, 1802, or thereabouts.

Q. Was that the first meeting the young lady's friends and you had upon the subject?—A. It was.

Q. You said you continued disposed to the match until that meeting?—A. I did.

Q. Did the same disposition of mind continue after that meeting?—A. Oh! not at all!

Q. Did you withdraw your consent?—A. I did.

Q. What induced you to withdraw your consent?

A. Because there was a fortune promised to my son, and no prospect of its being paid.

Q. But sometimes, you must know, a fortune that could not be paid at the moment, might still be secured.

A. I did not require it should be paid at the moment.

Q. Did you express a willingness to accept security for the fortune, or was any satisfactory security offered to you for it?

A. There was no satisfactory security offered to me for the fortune.

Q. Was it the want of sufficient security caused you to withdraw your consent?—A. It was.

Q. When did you apprise your son that you withdrew your consent?

A. In a few minutes after the conversation with the lady's friends.

Q. If the security had been satisfactory to you, would you have consented to the going on of the match?—A. I would.

Q. Was it, Sir, by desire of your son that you opposed any obstacle to the accomplishment of his marriage with Miss Fitzgerald?

A. It was not; he expressed no wish of the kind to me.

Q. You have said, Sir, that you laid commands on your son not to let this match go on.—A. I did.

Q. Was you peremptory and resolved, not to renew your consent to it?

A. I was, as the promised fortune was not to be had.

Q. Did you make any positive resolution to that effect?

A. I did.

Q. Did you bind yourself to adhere to it?—A. I did.

Q. In what manner?—A. By oath!

John Hawkesworth, jun. cross-examined by Mr. Ball.

Q. Do you know the defendant in this cause?—A. I do.

Q. In what relation do you stand to him and the last witness?

A. Defendant is my brother, and the last witness is my father.

Q. Did you, or did you not, swear that it was after the match between your brother and Miss Fitzgerald had been broke off, that your father took the oath you mentioned?

A. I might have said so by mistake, but I certainly did not mean it.

Q. By what means did you interfere to prevent the marriage from taking place—was it not by persuading your brother to a breach of his engagement?

A. It was not; it was by threats of communicating his intentions to my father.

Q. You said you knew these parties were mutually contracted, and that you interfered to break that contract, looking up to a better match for your brother—pray, in looking to a better match, which do you mean, connections or fortune?

A. Connections.

Q. What, Sir—is not the family of Miss Fitzgerald quite as respectable as the family of the Hawkesworth's?—*[A pause, with a gentle suffusion of the face.]*—A. It is as respectable a family as any other in the same county.

Q. Don't you believe the lady always entertained a pure and sincere attachment to your brother, ever since the commencement of the contract between them?

A. I do not doubt but she might.

Q. What could tempt you, therefore, to interfere in breaking so solemn a contract?

A. I conceived, when my brother entered into the engagement, he was both young and foolish, and might afterwards make a better match.

Mr. CURRAN. As counsel for the defendant, it falls to my lot to make a few observations to you on behalf of my client, respecting the nature of the evidence to which, for some days past, you have paid a very patient and serious attention; and considering, as I do, with some degree of regret, how arduously that time has been employed since the commencement of this trial, I make no doubt of obtaining implicit belief, when I assure you it is with infinite reluctance I rise to trespass further on that time and that patience you have hitherto so willingly bestowed on the consideration of the subject before you. Permit me to say, it is not a cold sense of mere forensic duty that could impel me to this trespass—no, gentlemen, the advocate who pleads the cause of an injured client, who feels he acquits himself of the duty he owes that client, by a flippant arrangement of words, or artful display of argument, is not to be envied, while, under such circumstances as come before you this day, he contents himself with mere professional exertions—exertions in which the heart is too often fastidiously forbid to take a share. Whenever superior talents take an eccentric movement out of their destined path—and in the statement of the plaintiff's case, the learned counsel has most cruelly permitted those talents he is so eminently gifted with, to take a devious route,

while immolating the fair fame of my unhappy client, it can prove no reparation to the injured feelings of the lady, in whose cause so much zeal has been exerted, to blast for ever the character of the man she once had loved. I am sorry, therefore, I have too much room to say that my client has had a cruel and unmerited portion of obloquy and reproach dealt out to him in the statement you have heard this trial commence with. But, gentlemen of the jury, you cannot fail to recollect that in the variety of artful appeals to your feelings, during that very able and complex statement—though much has been said against my client—though strong and imposing assertion has been advanced to an immeasurable stretch of unqualified exaggeration—you cannot, I say, but recollect, though much has been advanced, that but little indeed has been proved. In recollecting this fact, gentlemen of the jury, and while you have it so strongly on your minds, you cannot but discern the wantonness of that abuse so copiously flung against the fame of the defendant, and you will also perceive, that it was not that kind of Billingsgate jargon, or that ordinary share of invective, the poison of which may be corrected by the filth in which it is involved—this being a species with which the mind of a gentleman can never be tinctured—but, while throwing off all that coarseness that might disgrace the language in which these bitter sarcasms were so studiously dressed, they still retain all that subtilty and acrimony necessary to corrode, and eat into a character hitherto preserved inviolate, by a sacred regard to the performance of those duties attached to the functions he adopted, and embellished with those manners which, in effect, are identified with that moral system by which polished society is sustained and adorned.

Respecting the lady, in whose cause her zealous and learned advocate had exerted so abundant an excess of chivalry, I grant, that wherever the feelings of a female are concerned, she is entitled to a gallant spirit of courtesy throughout the general concerns of life; jurors, however, are exempt from

this duty; you are not in that box, gentlemen, to try facts that might stimulate or excite such a spirit,—on the contrary, you are to guard, with great care and solicitude, against those kinds of impressions, by which you might be misled to conceive yourselves entitled to give to objects of fancied adoration or compassion, that well meaning, but whimsical and inordinate measure of damages, for breach of a childish engagement of matrimony between infants in their cradles. If you do, husbands and fathers, as I am persuaded most of you are—take care you may not one day or other have to lament the encouragement you must, by acquiescing with the views of the plaintiff in this action, give to filial disobedience; take care what reason you might hereafter give to young females, less guarded by prudence and discretion than the plaintiff is, *perhaps*, justly represented to be—take care, I repeat, what temptation you might afford such ladies, under circumstances of some similarity with the present, to say “Gentlemen of the jury, if you don’t restore me the heart, and give me possession of the person of my betrothed, I insist you will give me a portion to procure a substitute for him.”

In this action, gentlemen of the jury, two questions arise for your consideration. The first is, to decide whether the plaintiff is entitled to a verdict. The next question is one which calls upon you to investigate what measure of damages you will deal out to the lady, should you determine that she is entitled to any. If the case so elaborately stated for her be not proved, you ought not to give her damages. If it be but in part proved, it is then incumbent on you maturely to consider what damages she has actually sustained, to which you must apportion those you shall consider yourselves bound to give her. The defendant, you have heard, was a student at college when he first fell a tender victim to the lady’s charms, young, blooming, and beautiful, as I dare say she was; and I do not scruple to assert that she might have well deserved all the panegyric that has been lavished on her. But I rejoice, for the sake of so meritorious

a young lady, to find that no attempt was made to sustain by evidence, an assertion as boldly made as any other in the statement of her case, that something of a *mysterious ceremony* was resorted to, to bind, by anticipation, the connubial engagement into which these *children* had so precipitately entered. I rejoice that no proof of such circumstance was advanced, as otherwise it could not fail to have plucked a feather from the plumage of eulogium with which the lady has been so profusely bedizened.

Gentlemen of the jury, I know you all generally, many of you I have the honour of knowing personally; and I know also that you will bring to your recollection those happy juvenile hours you have individually passed in the contemplation of the perfections of some *aërial dulcinea*, before the cares of the counting-house, or the rubbish of the Royal Exchange, had converted your golden dreams of innocent love into solid lumps of that base and contagious metal! You remember the days, when the stars presided over the awful solemnity of the vows which your *Angels* and you had exchanged, when they dropped ambrosia, in sympathy with the tears you have shed, while the sacred vow you authenticated upon earth, flew up to "Heaven's Chancery to be registered," and having been attested there by surrounding cherubims, a winged messenger communicated the glad tidings of that event in a dream, and your respective goddesses and you surely must by moon-light have another meeting in the grove, where, in the language of romantic love, under the umbrageous foliage of perpendicular poplars, and drooping willows, you re-enacted the contract, calling that "Heaven to witness," in whose records the holy vows of indissoluble bondage were safely locked—never, never to be disturbed by any vexatious process of terrestrial investigation, which your crusty parents, insensible of your sublimated feelings, might, in their money-making malice, institute against you.

This, gentlemen, you all now must feel, is a faithful transcript of what you all have felt; I therefore submit to that

careful retrospection of the innocent days of your childhood, which, in comparing the present case with your own, it is incumbent on you to take. I ask you solemnly, and put it to your individual experience, whether you need strain your faith in believing that before myriads of the same twinkling witnesses, studding the cerulean sky, on a fine moon-light night, in the summer season, and in the green fields of Ireland, there might not have been more than five hundred contracts of infantine marriage perpetrated, as this within your consideration was, in the same hemisphere, and on the same night? In considering this subject, therefore, to that extent in relation to facts, to the utmost point in which candour will support you, you must indispensably take a different view from the learned Serjeant, who stated the case, of the "worm which fed on the lady's damask cheek."

It was, doubtless, a luxurious feast for the worm—the table cloth might have been damask, but not a word has been said of the lilies and roses beneath. The learned gentleman, at the top of his profession as he deservedly is, knows the law too well to commit himself, by any possible implication, in denying that, in contracts respecting the roses on a lady's cheek, there unquestionably exists a *toties quoties* clause of renewal—neither is he so averse to lounging at a lady's toilet, as not to be sensible that it is much more difficult to darn a hole in a worm-eaten damask, than to find a nostrum to restore a faded rose to its original bloom. But, rather than cure the paleness of disappointed affections by any of the known receipts of restitution, the lady was persuaded that a marriage, which prudence would strongly condemn, while spurning at parental authority, and violating all the rules of filial obedience, would have been a more simple and efficacious method to reinstate her in lost happiness—she has resorted to the last expedient, and, with great solemnity, put it before you for irrevocable decision. But, if you shall be convinced that the defendant has been guilty of premeditated fraud, after resuming a contract, as is alleged, and of which

there is no proof before you, after the lapse of time prescribed by the act of limitation—a statute which, his lordship will inform you, bars all marriage contracts not renewed within the time limited in the act of parliament—if you should be convinced that, under all these circumstances, the defendant has wantonly and cruelly broken his plighted vows to the plaintiff, after he had solemnly, at mature age, renewed them, and prevented her from any other honourable disposal of herself, it becomes a subject which ought not only to impress itself on your hearts, but also on your consciences.

Here we are reluctantly compelled, from the narrowness of the limits to which under our present circumstances we are reduced, to curtail and suppress a great portion of those fine strains of satirical and argumentative elocution with which Mr. Curran proceeded for two hours longer. He drew a striking contrast between inconsiderate engagements in nonage; the mere ebullitions of romantic spirits, and those solemn contracts entered into at mature years, which to violate is considered criminal by the laws of God and man—he exhibited a variety of cases and illustrations, to prove that the statute of limitation completely barred the plaintiff in this action, as no renewal of the alleged contract occurred within the time prescribed by law. To bind his client down, by an arbitrary performance of a juvenile contract, he looked upon as a species of the most unqualified slavery; and asserted that all legal contracts of this description are not only subject to express, but to implied conditions. If, therefore, Mr. Curran urged, a merchant, under favourable prospects of life, conceives an affection for a female who entertains a reciprocal one for him, on which a contract of matrimony ensues, in substance as follows:—The gentleman says, “we can’t marry now; but I promise to marry you, if you will marry me.” The lady, after a coy and modest reluctance, consents to this engagement:—but, should the gentleman next day become a bankrupt, is it rational to suppose that he is bound in conscience to fulfil an engagement at first

entered into under auspicious prospects and circumstances, should she be foolish or mean enough to demand a performance of his promise, when, by such concession, he must, perhaps, inevitably make her as well as himself a victim for life! The fair and equitable principle on which engagements of this nature should always be fulfilled is, that the promise shall be inviolably kept, unless its performance becomes fatal to either of the parties.

In reference to Mrs. Palmer's testimony, wherein it appeared that the defendant's affections for the lady had declined, Mr. Curran drew a fine picture of the instability of all human events, and the peculiar uncertainty of the human mind, whose affections, *particularly in affairs of love*, are so little under the control of reason. He asked, with emphatic solemnity, "what idea must a delicate female form of conjugal happiness, who, under a consciousness that all those affections once professed by the man of her choice—professions which she once deemed sincere, had vanished—and that indifference, if not disgust, had usurped their place?—where, he asked, could have been that magnanimous, that virtuous pride, the stay and prop of female honour, which could not snatch a woman from submitting to go through the cold humiliating ceremony that should for ever join the living body with the dead?"—On the defendant's implicit reliance on the will of his father, when he found it impossible to obtain his consent to the fulfilment of his engagement with the lady, to which, notwithstanding altered affections, he always paid a rigid and honourable attention. "He had flattering prospects in life, all of which he was content to sacrifice for her—he possessed talents in his profession, and notwithstanding the general obstruction talents offer to preferment, he still, by some fortuitous stroke, might entertain rational hopes of obtaining preferment." From a variety of arguments, some extremely original and acute, and others directed against the claims of the plaintiff, from a construction of the evidence adduced in her favour, as well as from the testimony of the defendant's father and brother,

on which he commented with a minute precision, not often equalled, Mr. Curran drew a general inference, that the defendant's engagement, renewed in 1801, was to all intents and purposes one under certain conditions and qualifications, from any one of which he never once departed.

Adverting to the part which the plaintiff's brother had taken in the course of the whole proceeding, he did not feel disposed to call the general propriety of his conduct in question, but said—I do not like the punctilious soldier and brother bristling in fraternal sensibility, while weighing with apparent candour the various circumstances of this transaction in his intercourse with the defendant, still taking occasion to throw in the hilt of the captain's sword to make his favourite scale preponderate. I do not, I say, like such perseverance in worrying or tormenting my client into a precipitate compliance with the interested views of the lady's family. As to any active part in these proceedings, beyond what duty and compliance with the wishes of her friends might exact, I have no hesitation most cordially to exculpate her; and had she been left to the guidance of her own good sense, she would have exhibited the dignity of her character by the mode of her sorrow. I therefore conjure you, gentlemen of the jury, not to avert by your verdict of this day the chance that still exists of bringing these parties together with renewed amity; nor protract that day, when, with mutual consent, and mutual approbation of their respective families, they may unite in joy and satisfaction, and terminate their days as exemplary models of conjugal bliss and domestic tranquillity.

Mr. Dunn, in reply to Mr. Curran, made many strong and pointed observations. He represented his client, Miss Mary Fitzgerald, as one of the most unimpeached women in existence. From the lips of her opponents in this cause, as well as from those of her friends, flowed nothing respecting her but unbounded panegyric. He was not accustomed to call even crimes by hard names; but in the conduct of the

defendant towards his client; he knew no epithet in any language sufficiently expressive of a species of treachery, perhaps unexampled in any age throughout the blackest records of moral depravity. Passing over the disgusting levity in one of his letters to Captain Alexander Fitzgerald, such as "what fellows we churchmen are," &c. where he talks of rearing himself into consequence and notice in the church, on the supernatural infirmities of an old incumbent of eighty years of age, who doubtless must die to accommodate his ambition; in what instance does he name this old gentleman? In none—he carefully avoids committing himself on that ground, from the facility of detection. On the subject of that mean finesse which he played off, while scheming to set a prohibiting price, as he thought, on the performance of his sacred promise to this lady, who, from the moment he enjoined her to secrecy, commenced the first duty of a betrothed wife by an act of implicit obedience to him. Here Mr. Dunn very emphatically observed, little do the sordid know what treasures are accumulated in noble and disinterested minds, treasures ever impervious to the vulgar eye; and little did this gentleman consider who he had to deal with, in a family of high honour and respectability, linked to each other in one solid mass of reciprocal and general interests. Summing up the whole of the nefarious proceedings, with which the defendant must stand indelibly branded, he had no scruple in asserting that if all the trash of wealth, which the whole family of the Hawkesworths had been scraping together since their name became known, had been thrown into Miss Fitzgerald's lap, it would not half compensate her for the numberless pangs of anguish, the sighs of sorrow and affliction, she and her amiable sympathizing sisters had vented and endured for ten years past, mourning together on the baseness practised on their credulity, and that unsuspecting confidence, ever the invariable concomitants of innocent and unsullied minds.

The Lord Chief Justice, in charging the jury, observed, that from the very tedious discussion this case had undergone, during the three days it had been before the court, and from the great exertion and uncommon display of ability devoted to it by the counsel on both sides, very little was left for him to observe on, that had not already been put in almost every possible point of view, which great ingenuity and as great talents could suggest. His lordship, adverting to the different counts laid in the declaration, said, that the plaintiff had strictly conformed to that proceeding, particularly in her message to the defendant requiring the fulfilment of his engagement, which the nature of the action had rendered requisite. On the subject of nonage, his lordship recognised the law as laid down by the counsel, that any matrimonial contract, perfected while either of the contracting parties are minors, is to all intents and purposes illegal, and should be dissolved. On the folly of these infantine contracts his lordship was peculiarly strong, coinciding in the opinions he had heard from Mr. Curran, that they were in general founded on a very reprehensible species of rashness, and too generally operated as an encouragement to filial disobedience. In this case the original contract, perfected in nonage between the plaintiff and defendant, at its commencement, in point of law, was a nullity, and would have remained so, if not renewed when the parties had attained to mature age.

His lordship dwelt with much energy on the irreparable injury the character of a gentleman and a clergyman must sustain, should the jury too lightly take up the imputations cast upon him, "that his whole conduct, throughout this engagement, was a compound of falsehood, and altogether a tissue of complete duplicity." That he was only actuated by principles so nefarious from their atrocity, becomes the more incredible, and the jury should reconcile their minds to the most positive conviction on that head, before they would stigmatize any man, under similar circumstances, by a verdict of vindictive damages.

The jury, in a short time, gave a verdict for the plaintiff, 2,500*l.* damages, and 6*d.* costs.

COUNSEL for the plaintiff: Mr. Serjeant Moore, Messrs. Ball, Dunn, Bush, and Penefather. Agent, Mr. Cosgrave.

COUNSEL for the defendant: The Solicitor-General, Messrs. Ponsonby, Curran, Barrington, and Boardman. Agent, Mr. Fullerton.

TRIAL AT ENNIS ASSISES.

REVEREND CHARLES MASSY V. THE MARQUIS OF HEADFORT,
FOR CRIM. CON. WITH THE PLAINTIFF'S WIFE.

THIS very interesting trial came on at Ennis, Clare county, on Friday, 27th July, 1804, before the Honourable Baron Smith and a special jury.*

Mr. Bennett, as junior counsel, opened the declaration, and stated, that it had been laid for the sum of 40,000*l.* being the compensation sought for the damage alleged to have been sustained by the plaintiff, in consequence of the defendant's *seducing and taking away the plaintiff's wife.*

Mr. Hoare. This is the first action of the kind a jury of this county has ever been empannelled to try—and, as it is the first, so, I hope in Heaven, it may be the last. Many idle reports have been circulated, and the subject of this trial has engaged much of public attention; but it is your duty, as I am sure it is your wish, to discharge your minds from every idle rumour, to stand indifferent between the parties, and relying upon the evidence, and collecting information from

* The singularity of this trial; the eminence of the counsel engaged on both sides; the character of the plaintiff; the age and rank of the defendant; and the youth and beauty (and folly) of the lady—all conjoined to excite vast curiosity. Accordingly, great numbers crowded from every part of the country into the small town of Ennis—ten guineas were given for a bed, and any money to get a place in the court—A short-hand writer came all the way from London to take notes of the trial.

the witnesses on their oaths, who will be produced to you, to found your verdict upon facts well attested, and of which you only are the constitutional judges.

The plaintiff, the Rev. Charles Massy, is the second son of a gentleman of high distinction in this county, who has been more than once called to the representation of it by a free and honourable election; and not only so descended, but is a person of liberal education—a member of one of the learned professions—in the prime of life—a man not only of inoffensive manners, and of innocent life, but a man whose virtues correspond with his situation in society, and adorn the profession he has adopted. In 1796, Mr. Massy became attached to Miss Rosslewin. Mr. Massy, being a second son, and not independent of the bounty of his father, possessed then a living but of 300*l.* a year. Sir Hugh Massy, his father, disapproved a match, “which had not fortune to support the claim of beauty,” and had, therefore, proposed one with a young lady of a neighbouring county, which he conceived, in point of fortune and of connection, far more eligible, and, on that occasion, had offered to settle on his son, the plaintiff, 1,100 pounds a year, in landed property, together with the young lady’s fortune; but, declining the hand of an amiable and accomplished lady, refusing an ample and independent establishment, with the additional enjoyment of parental bounty and approbation, and foregoing all these advantages, Mr. Massy proved the sincerity and purity of his attachment, by a generous sacrifice of fortune to affection, and married Miss Rosslewin in March, 1796. The happiness of the young couple, during eight succeeding years, not only seemed to be, but really was, unmixed and unabating—he loving with constant and manly ardour, she with chaste and equal affection—and, during that interval, Heaven had blessed their union with a boy, the bond and cement of their present happiness, the pledge and promise of future multiplied felicities. Then Mr. and Mrs. Massy exhibited such an example of domestic contentment and satisfaction to their neighbours,

their relatives and their friends, as to convince them that the sacrifices he made were not too great—that her grateful and affectionate returns to a conduct so nobly liberal, and disinterestedly affectionate, were not too little—guilt and treachery had not yet made their way into the abode of peace and innocence—all was quiet, tranquil, and happy—till, to the misfortune of this county and couple, the Marquis of Headfort made his appearance at Limerick.

Mr. Massy happened to have had, some years since, a living in the county of Meath, where Lady Bective, the mother of the Marquis of Headfort, was a principal parishioner, and from whom, during his residence in the parish, Mr. Massy received much polite and hospitable attention; from this circumstance of his acquaintance with her, Mr. Massy waited on her son, on his arrival at Limerick, invited him to his house, and strained his narrow means to give the son of Lady Bective every proof of his sense of her former attentions and politeness; but, while indulging the hospitable spirit of our county, little did Mr. Massy think he was introducing into his house the man who could conceive the blackest and basest designs against his peace and honour—that this stranger, so hospitably received, and so affectionately cherished, was to pour poison into his peace, and make him a wretch; for no reasonable man could suppose that Lord Headfort, at his time, ever could disturb the peace of any family—his age—(for he is above fifty)—his figure—his face, made such a supposition not only improbable, but almost ridiculous; yet, so it happened, that this “hoary veteran,” in whom, like *Ætna*, the snow above did not quench the flames below, looked at Mrs. Massy, and marked her for ruin. And nothing more beautiful could he behold, and nothing upon whom it was more unlikely that such a *venerable* personage as his lordship could have made an improper impression.

Lord Headfort spent four days at Summerhill, on his first visit, and was introduced by Mr. Massy to gentlemen of the first rank and consideration in the county—the Bishop of Lime-

rick, brother-in-law of Mr. Massy, and every other gentleman and nobleman in the neighbourhood. I need not, in this most hospitable part of Ireland, mention to you the consequence. Lord Headfort was received, entertained and cherished by the friends and relatives of Mr. Massy. Whilst Mr. Massy was endeavouring, by every polite and hospitable attention in his power, to render his temporary stay in this county not unpleasant to him, some anonymous letters first created in the breast of the plaintiff, not suspicion, but conveyed an intimation "that the Marquis of Headfort was too attentive to Mrs. Massy." Too confident in the virtue of his wife—too generous to credit information so conveyed—and, yet, too prudent wholly to overlook or disregard it, Mr. Massy prohibited his wife's visits to Limerick, and this was followed up, by intimating to Lord Headfort, that his lordship's visits would be dispensed with at Summerhill, his (Mr. Massy's) place of residence. Lord Headfort's visits were discontinued—his lordship promised not to repeat them.

And yet, though Mr. Massy took these precautions, he still had the utmost confidence in the virtue of his wife, and not without apparent reason, for she still preserved the appearance of the most affectionate attachment to him, and acquiesced, without a murmur, in what his prudence prescribed. Her correct manners, her strict attention to her religious duties, might have imposed upon a keener penetration than her husband's; she regularly attended divine service, took the sacrament, and has been heard to reprove her brother and brother-in-law for want of attention to these duties; and in conversation, turning on the indiscretions of other women, was often heard to declare, "that if affection for her husband, so well merited, or for her child, were not sufficient checks to keep her steady to her virtue, her sense of religious obligations would alone have that effect." The unaffected liveliness and simplicity of her manners, the decency of her deportment, her endearing attentions to him and

her child, left not the shadow of suspicion on the mind of Mr. Massy, that she could, in anywise, forget her sex, her situation, or her duty, much less that she could run into the coarse toils spread for her by Lord Headfort. It will shock and appal you, gentlemen, to hear the time and occasion which Lord Headfort selected for the final accomplishment of his designs upon the honour of this unfortunate woman, and the happiness of his host and his friend. The day was Sunday, the hour the time of divine service—yes, gentlemen, on that day, and on that hour, set apart for the service of our Creator, whilst the Rev. Rector was bending before the altar of his God, invoking blessings not only on the flock there assembled, but on the head of the unfeeling and profligate destroyer of his comfort and honour—on such a day, at such an hour, upon such an occasion, did the *noble* lord think proper to commit this *honourable* breach of hospitable faith, this high-minded violation of the little laws of your diminutive county; this contempt—I would almost call it this defiance, of the Almighty himself—and will not you, gentlemen, the sworn arbitrators of this profanation, the guardians of our laws and our religion, the conscientious ministers of divine and human justice, reward the *noble* delinquent accordingly? I know you will; and to you, and to your just estimate of such an act, I commit this *noble* act, and its *most noble* actor.

I have to state, what will be proved, that on a Sunday, at such an hour, Lord Headfort took off Mrs. Massy from her husband's house at Summerhill; they crossed the Shannon in a boat, got into a chaise in waiting for them on the road, and from thence posted to Pallas, 18 or 19 miles only from Summerhill—there he and Mrs. Massy, heedless of the misery and distraction of her unhappy husband, remained in the same room the whole of Sunday night. The noble peer did not fly—no; he made short and easy stages—not fearful of pursuit—not as a criminal endeavouring to effect his escape—but as a conqueror, parading slowly through the country,

and quietly enjoying the glory and honour of his triumph! What was his triumph? The distraction of the friend he maddened with agony—the pollution of a till then spotless and innocent woman! From Pallas his lordship pursued his rout to Clonmel, and there rested a night—from thence to Waterford, then to England; where, I trust, he will ever remain, because I am satisfied that no advantage to be derived to the country from the most ample fortune expended here, could countervail the mischiefs that must flow from the exhibition of such pernicious examples among us. I fear I detain you too long, yet it is necessary to detail the enormity of this foul transaction, “in itself most foul:” to you, then, I will leave it to mark, by the verdict you will give, your approbation or disapprobation of the conduct of this *nobleman*. He was not young: if young, the ardour and inexperience of youth might have been some extenuation of this enormity; but many years had elapsed since the *venerable* peer could have insisted upon such a plea. The noble lord is, I am instructed, between 50 and 60 years of age, and from the life he has led, and the pursuits he has been engaged in, we must conclude his constitution not to be of a very green old age; at this advanced period of life the slightest check of principle must rein in and restrain the passions.*

But if a sickly appetite cannot be controlled, and must be

* If the court calendar be correct, the noble lord is scarcely yet 50 years of age, but he is old enough not to play so foolish a part in so public a way. The father of this right honourable adulterer, this ornament of the Corinthian pillar, was an eminent grazer, who sold many hundreds, probably many thousands, of good fat bullocks in Smithfield—but he was a sensible man, and well knew how to drive his bargains to a good market; accordingly, he accumulated a great fortune, and before he died, he graced the peerage list as Earl Beective. Little did the old gentleman think that so many thousands of his bullock money would be wasted in a *crim. con.* affair! His son, the principal figure in this drama, by royal favour, is a baronet, a baron, a viscount, an earl, and a marquis of his majesty's loyal kingdom of Ireland, with a fortune of 40,000*l.* per annum.

fed with perpetual supplies of dearly purchased variety, let the wealth he commands and abuses procure it, without breaking in upon the peace and honour of respectable families. The noble lord proceeded to the completion of his diabolical project, not with the rash precipitancy of youth, but with the cool and deliberate consideration of age. The Cornish plunderer, intent on the spoil, callous to every touch of humanity, shrouded in darkness, holds out false lights to the tempest-tost vessel, and lures her and her pilot to that shore upon which she must be lost for ever, the rock unseen, the ruffian invisible, and nothing apparent but the treacherous signal of security and repose; so this prop of the throne, this pillar of the state, this stay of religion, this ornament of the peerage, this common protector of the people's privileges and of the crown's prerogatives, descends from these high grounds of character, to muffle himself in the gloom of his own base and dark designs, to play before the eyes of the deluded wife and the deceived husband, the falsest lights of love to the one, and of friendly and hospitable regards to the other, until she is at length dashed upon that hard bosom, where her honour and happiness are wrecked and lost for ever. The agonized husband beholds the ruin with those sensations of horror which you can better feel than I describe; her upon whom he had embarked all his hopes and all his happiness in this life, the treasure of all his earthly felicities, the rich fund of all his hoarded joys, sunk before his eyes into an abyss of infamy, or if any fragment escape, escaping to solace, to gratify, to enrich her vile destroyer. Such, gentlemen, is the act upon which you are to pass your judgment, such is the injury upon which you are to set a price, and I lament that the moderation of the pleader has circumscribed within such narrow limits, the discretion you are to exercise upon the damages; you cannot exceed the damages laid in the declaration. I lament, and so I hope do you, that you cannot; for the damages laid do not exceed one year's income of the noble lord's estates. The life of the adulterer is in

some degree in the power of the injured husband; if the husband kill the adulterer caught in the fact, the killing is not murder: what, according to the noble lord's own estimate, would be the value of the noble lord's life? In mine, and perhaps in your estimation, the value of the noble lord's life would not be very high, but take it according to his own, and it is invaluable; the ransom of his life ought to be the measure of your damages. What can he plead? Is it that he too has a wife and children; is it that as a double adulterer he comes into a court of justice, and interposes the innocence of his family between his crime and your justice? Are his *titles* and *honours*, as they are vulgarly called, to dazzle your eyes, and blind you to the demerits of his conduct? No, no—what are titles conferred by kings, if the souls of those who wear them be not ennobled by the King of Kings; these badges of distinction, these splendid emblems of shining merit, these rewards conferred by grateful sovereigns on eminent attainments in science, or achievements in war, may be well allowed to adorn wisdom and virtue, but cannot make the fool wise, the coward brave, or the knave honest.

There are two grounds of defence, upon which I hear the noble lord means to submit his case to the jury. The connivance of the husband—the notorious general misconduct of the wife—both, if I am rightly instructed, unfounded in fact, and not to be supported by any credible testimony. Witnesses to these, or to any other facts, may be procured; but the jury is to determine on their credit. But who is the man who will have the hardihood to come forward and tell you that Mr. Massy, or any gentleman of his family, rank, character, education or profession, could stoop to a conduct so uniformly mean, so scandalously dishonourable, and if such a witness can be found, who is the juror that will believe him? Can any *gentleman* believe that a *gentleman* could be wilfully instrumental to his own disgrace, the promoter of his own dishonour, a pander to the prostitution of an adored wife, the stigmatizer of his idolized offspring? Such a tale (let the

relater be who he may) is in itself utterly improbable. The proud mind of my client cannot condescend to contradict it; but let the tenor of his whole life, his character yet unaspersed and unblemished, his generous sacrifices to this very woman before her honour became his honour, and her character the object of his protection; his exemplary conduct as a husband, a father, a pastor of our church, a member of society, give the lie to a story which cannot be told by any man of honour, or be believed by any man of sense. It is not impossible, however, gentlemen, that the Marquis of Headfort may attempt to cover his retreat from the pursuit of justice by some contrivance of this kind, nor is it quite impossible, however improbable, that he may find some plausible instrument, hard of forehead and flippant of tongue, ready, from the motives which generally actuate such instruments, to devote himself to the perilous service. If such a witness should appear before you, I will give you a glew to his character; I will describe to you what he is, and I much mistake, if, by these marks and tokens, you can fail to know him if he shall appear. He is not like those whom I have the honour to address, a gentleman who has a character to stake upon the testimony he will give. He is not a gentleman whose intercourse with the world has fashioned him to courtesy, without wearing out and defacing those sharp and prominent features of old fashioned probity, undeceiving truth, and unbending pride, which characterize the Irish gentleman. But I will tell you what he is.*

Let me now touch the second ground, of what I understand is to be the noble lord's defence, the general misconduct of Mrs. Massey before her elopement with him. It well becomes the Marquis of Headfort to cover with additional disgraces the unfortunate victim of his delusions; is it that in the struggle between his avarice and his vanity, the former

* Here follows something of a local and personal nature, which the note-taker has thought proper to omit.

has conquered, or is it so ordered by the wise and just dispensations of Providence, that the best boons successful vice bestows upon subdued chastity, are private contempt and public infamy? But though the noble marquis may not hesitate to sink still lower and lower the degraded object of his guilty passion, yet there are other considerations which might hold back from such an attempt, a man not inaccessible to the feelings of humanity: Mr. Massy has a son still living; why should this innocent be more involved than he already is in his mother's dishonour? Why should this half-orphaned child, robbed of one parent by the *noble* marquis, become, by the deliberate act of his and his family's enemy, the sad remembrancer of the other, of a father's doubt and a mother's dishonour? Is this additional pang to be inflicted on the lacerated bosom—is this new wound to be opened in a bleeding and exhausted heart?—Why will the *noble* marquis endeavour to infuse this horrid suspicion into Mr. Massy's mind that the offspring of his marriage-bed is spurious; that though the father of a living son, he is perhaps childless, his affections lavished upon, his name borne by, his fortune destined for, perhaps, an impostor. This attempt the noble marquis will make, I am told, to mitigate the injury, and diminish the damages. If such an attempt be made, you, gentlemen, will appreciate such an attempt according to its real worth and true value. This attempt can only be supported by such a witness as I have already described to you, and from whom your honourable hearts will recoil with scorn and abhorrence. We are prepared to show you, by the testimony of most respectable personages, that the fame of this now unhappy woman had never been sullied by the slightest imputation, until her connection with the Marquis of Headfort.

I feel, gentlemen, I have been honoured with your attention too long; I shall detain it but a very little longer. In this action the plaintiff is entitled either to the largest or the smallest damages; if connivance be proved to your satisfaction, a single shilling would be too much; if not, I knew not

what measure of damages, under all the circumstances of the case, would be too large. It will be proved to you how he received the first news of her flight. The first intimation was like the stroke of death. His portion, for several weeks after, agony and distraction. Happy would it have been for him if death had followed the shock, or madness relieved him from misery. It now rests with you to compensate the sufferings of this deeply injured individual; it is with you to determine, whether the penalty you inflict on lawless lust, shall operate as a protection to legitimate happiness; whether your ample verdict shall not, like a shield, cover domestic peace and social order from brutal insult and dishonest violation. If the "compunctious visitings" of conscience and duty cannot dissuade the black adulterer from his designs upon the quiet of others, let the example you make drive him from your doors, and deter him from the spoil of your dearest and most invaluable possessions, your happiness and your honour. And may that God, under whose eye, and in whose presence we act, when his hand shall hold the balance of Divine Justice, when those transgressions from which the errors and infirmities of our nature exempt no human creature shall be put into one scale, may the weighty and exemplary verdict of this day accompany your merits into the other and make it preponderate.

Here follows an examination of witnesses. The Rev. Dr. Parker proved the marriage of the plaintiff, the Rev. Charles Massy, according to the rites of the church of England, to Mary Anne Rosslewin, on the 22d day of March, 1796.

Mr. Stackpoole, uncle to both Mr. Massy and his wife, proved, that at the time of the marriage, the gentleman was 24, and the lady 18 years of age, and that they lived together in great love and harmony, and had a son now about six years old—that Mr. Massy having married against his father's consent, he only got 200*l*. with his wife, whereas, had he taken the lady that his father recommended to him, he would have got a fortune of many thousand pounds; it was there-

fore entirely a love match. On Mr. Stackpoole's cross-examination it appeared that Mr. Massy had an elder brother, whose wife not living with him, he had a *mistress* in her place; an English woman. Defendant's counsel endeavoured to show that the plaintiff's allowing his wife to visit at such a house, was throwing her in the way of bad example, and that he was careless of her moral character.

PAT. DUNN, a servant to Mr. Massy, examined,

Q. How old are you? A. Seventeen years.

Q. Do you know the consequence of taking a false oath?

A. Yes—no chance here or next world.

He then gave an account of the elopement of Mrs. Massy with Lord Headfort, on Sunday, while her husband was at church—they went off towards Limerick in a post-chaise.

Jane Apjohn proved that Lord Headfort and Mrs. Massy came to the inn where she was a chamber woman; that they went to the same room, and slept in the same bed. Here the evidence closed for the plaintiff.

Mr. Quin. It is the particular duty of my situation to lay before you the circumstances of the defendant's case; submitting it on his behalf to your investigation, with a perfect confidence of your discharging the important duty devolved upon you, with all that justice and fidelity which may be expected from the goodness of your understandings and the integrity of your hearts.

Cases of this sort impose painful tasks upon the counsel for the respective parties. They will not bear much ceremony; no polite forbearance, no punctilious restraint can reasonably be expected; of this you have had tolerable evidence already. The husband who brings his action as such, to recover compensation for an injury offered to the most sacred relation in society, does thereby put his character and conduct, as a husband, directly at issue, and if he expects to succeed, must show that he fulfilled and discharged the

duties springing from that relation, because it is the violation of it, which constitutes at once the injury and the claim. We cannot differ as to the principle and foundation of this action; it arises out of the necessary politic provisions of society. It is bottomed on the finest and purest affections of the human heart. What man is there possessed of rationality and feeling, what husband who deserves the name, that can resist to sympathize with, and is not impatient to redress the sufferings of a person, deprived, without default of his, of that most inestimable of all human creatures, an amiable and virtuous wife? Here we agree. But in proportion as such feelings impel us to remunerate *such* an injury, and vindicate the wrongs of *such* a sufferer; so do we turn with disgust and reprobation, from an attempt to pervert the sacred nature of this remedy from its just and honest purpose, from the assistance of the pure, genuine, and legitimate objects of its care, to lavish its redress upon factitious injury, and make that jury who should be the instruments of its salutary efficacy, subservient to the schemes of hypocrisy and imposition. If the husband, who by his deportment is entitled to the name, meets such an injury, and sustains such a loss, compensate him (if he can be compensated) to the utmost limit which the case may bear. You, at the same time, requite the most poignant abuse which man can suffer, and give a wholesome lesson to society; but if all who call themselves husbands, shall appeal successfully to this tribunal, and under pretence of injury, shall clamour for money, to assuage their feelings by supplying their wants, you, in defiance of reason and of feeling, confound all claimants, you confer what should remunerate the injured on him who has received no injury, and equalize those persons who should stand in your estimation as separate as innocence and guilt. You sanction, nay, encourage an adulterous traffic; the matrimonial bond will become assailed by the most licentious, dissolute, and sordid motives; lust, avarice, and indigence will institute treaties on the subject; husbands will take

their wives to market, and instead of restraining, you will promote the vice.

The case of the defendant is not, because it cannot be, a case of justification. The facts stand admitted, and however it may be accounted for, it cannot be morally defended under any circumstances. The advocates of the defendant would not outrage moral decency, or affront the feelings and understanding of a jury. But the principle of the action should be exactly understood—the defendant is not here upon his trial for the commission of an offence against society—you are not placed there on this occasion as moral censors of the actions of men—public duties should not be confounded—the defendant is not the subject of criminal prosecution—but the plaintiff seeks compensation for a specific injury, and must show he has sustained it. He says he has lost, by means of the defendant, the comforts and enjoyments of conjugal domestic life. The law upon the subject is simple and well settled. If the husband, in the emphatical language of the law, connives at his own dishonour, (which I would not be understood to say he has done in the present case,) it goes to the foundation of the action, and he is not entitled to a verdict. That must of course be collected from the circumstances—neglect and inattention may be so gross as to amount to satisfactory evidence of connivance, or may disclose such demerits on the plaintiff's part, as should mitigate the damages to nothing.

The case before you is of the latter class, and as such we put it to you. Let me advert to the circumstances under which the plaintiff married Miss Rosslewin. She was extremely young—it was what is called, "a match of love"—that is, at their time of life, it was *passion* upon both sides, and *nothing else*—their attachments, founded as they were, were fleeting, and when they fled, nothing remained to bind them—their means were stinted, and they possessed but small resources to support the expenses of fashionable life—the *satiated lover* became the *careless husband*, and engaged in his

own indolent pursuits, he left his wife to choose her own. She was young, volatile, and giddy, beautiful and vain, of an uncommon levity (the witness called it *gayety*) of disposition, and fond of dress beyond even the ordinary passion of her sex—his manly advantages, and liberal education enabled him, and the prudential duties of his station enjoined him, to observe and guide her, lest, uncontrolled by the presence, and unassisted by the instruction of a husband, unrestrained by a marital admonition, unattended, unadvised, unchecked, and unreprieved by him, who was the natural guardian of her morals, and his own honour, indulged in profusion to which his income was inadequate, she engaged in a career of dissipation, and plunged into that vitious vortex, which hurried her to the depth of her own infamy, and his disgrace. Her life was passed and occupied—the plaintiff suffered it to pass amidst those scenes of fashionable enjoyment, wherein women, unfortified by principle, and unaided by advice, become exposed to the most dangerous impressions; her improving beauty solicited and provoked the admiration of our sex, and her situation encouraged their approaches—devoted to his own amusements, her natural protector wandered from her, and left “her fair side all unguarded:” she received and permitted with undistinguished delight, assiduities too observable to pass unnoticed, or escape the effect of public observation. Her dress became magnificent and costly. She passed months at the houses of single gentlemen, unaccompanied or unattended, save occasionally, by the plaintiff; and at Galway in particular, where she went on an excursion, the attentions of a military man of rank became so remarkable, and her encouragement so glaring, that her own connections found it necessary to snatch her from the spot, as from impending infamy, and hurried her to Limerick.

Thus, it will appear that this unfortunate young lady, who has been poetically represented by the plaintiff’s counsel as a paragon of domestic fidelity and female purity, until the spoiler came; and whose *piety* has composed one topic of

the panegyric, had never beheld the defendant, or he her, until the breath of public remark had tainted, if not blasted, her reputation. Such as I have described her so did the defendant find her—engaged in public fashionable life, immersed in pleasures, and practised in those arts which too often render a lovely married woman more *seducer* than *seduced*. He met her first at the races of Limerick, then at the races of Mallow, unattended by the plaintiff at either place; the attentions of a man of such superior rank were too flattering to be declined—they passed under public observation at all places of public or private fashionable resort—the eyes of all companies were fixed upon them, and her reception of them, being too obvious to pass unmarked, became the subject of general conversation. She avowed to her relations her attachment to the defendant, and her determination to go off with him. Are you to presume that all this took place unknown to her husband? Was he, though on the spot, alone deceived? It is said the defendant's propensity to gallantry is notorious—was that unknown to the plaintiff? It would be monstrous indeed, under such circumstances, to presume him ignorant; but he should have known her conduct, because it was his duty to observe and govern it. That such was her demeanour will appear in proof. We have heard and read of many husbands—the tender, the careless, the mysterious, the suspicious—but the plaintiff adds a new one to the drama, and gives the *unsuspecting*, or the *sightless* husband! Here was no breach of friendship—no confidence abused—the intercourse went on in public, and it was not till after a familiar acquaintance with the wife, well known to the plaintiff, that he and the defendant became known to each other.

While these proceedings were in progress to their consummation, the plaintiff, who had resigned Mrs. Massy to her own good guidance, passed his time in the house of his brother, enjoying the highly moral intercourse of him and Mrs.

Harvey. What! Gentlemen of the jury, the man who claims 40,000*l.* against another, for a breach of the most sacred moral relations in society—himself of a sacred and highly moral function, associates with the mistress of his brother, sanctions, by his presence, the expulsion of an amiable and deserving woman, cast into exile from that mansion which she could adorn, and witnesses her rights supplanted, and her place usurped by the dominion of a concubine—and if these be the plaintiff's claims to your regard, indulge him to the extent of his demand; but, before you do so, you will expect that he shall show himself entitled from his own deportment, for your verdict will be the result of reason and justice, and not, as has been said, of vengeance. What will you be disposed to feel, when you shall hear that she dined repeatedly at the house of the defendant, alone, unaccompanied and uncoun tenanced by any other female, and surrounded by his officers? To what can you ascribe such an unblushing breach of delicacy? What inference do you draw from that? Why that her principles were sapped before, and that it was as idle as unjust to charge the defendant with her ruin! What will you think when I inform you that after, in consequence of such misconduct, her relations shut their doors against her, the husband opened his. She returned from Limerick to Summerhill, the plaintiff's house, accompanied by the defendant, and no other person, in the defendant's carriage, and was received by her *unsuspecting* husband. What did he do? Did he express a natural indignation? Did he remonstrate? Did he reprove? No, gentlemen of the jury! He retired to Dian's temple at Donass, and the key of the cellar being left behind, nothing remained to impede the indulgence of love and wine—from thence, till he went off, the defendant passed whole days at Summerhill, uninterrupted by the plaintiff. Allow me to ask, where was Mr. Massy, and how was he occupied, while his wife was so conducting herself? Was he engaged away in the service of his king

and country? Was he laudably employed in the industrious task of furnishing the comforts and elegancies of life for the partner of his heart, and the dear pledges of their love? No; the man possessing a jewel of inestimable worth—who wished, in truth, to guard its value and preserve its lustre, would wear it next his heart; but the plaintiff threw this *gaudy, worthless trinket* here and there, to be picked up by every casual finder, or let it hang so loosely from his person, as to invite, and ready, as it were, to bless the silly hand which, tempted by its glitter, might feel disposed to rid him of the contemptible embarrassment, and snip it from his side. It has been lost, and you are called upon to estimate the injury, and to reprove the loss. You reflect how far it is worth the keeping—you appreciate the value of the article, and then determine upon what grounds, and to what extent, the plaintiff merits the interposition of a jury.

Here follows an examination of witnesses in favour of the defendant.

Colonel Pepper said, he had often seen Mrs. Massy in company with the noble marquis, who paid her "particular attentions;" she seemed to be highly flattered by them; his attentions were so marked that they drew the observation of all the gentlemen at the table."

COLONEL PEPPER, *cross-examined by MR. CURRAN.*

Q. You are a young man, colonel?

A. Yes, I am young.

Q. Pray, colonel, how long since the marquis left college?

A. I can't tell.

Q. Pray how stands his account with the calendar?

A. I have taken no calendar of his, but he is pretty far advanced.

Q. Are not there a few white memorandums on his forehead, a few gray hairs, colonel; was he not gray before he was good!—A. He is gray.

Q. You have heard him talk of actions, passions, and so forth, on the general topic of gallantry?

A. Sometimes.

Q. Could you give a rough guess at the number of Saints on his calendar, or how many Beasys or Pollys he may have drank to?—(on witness hesitating)—Colonel, it is very well, I respect a soldier's taciturnity on subjects of this sort. (No answer.)

Q. Some of these ladies were married, some unmarried colonel?

A. Yes; some were, and some were not.

Q. Was it not mortifying to his vanity to talk of his being so unfortunately seduced?—(no answer)—Is he not vain of these gallantries of his?

A. I cannot say I perceived it.

Q. Has he not boasted of them?

A. I never heard him that I recollect.

Q. The marquis is very rich, has a very large fortune?

A. He has, Sir.

Q. The marquis is married, and has a wife, a very amiable woman?

A. He has.

Q. How many children has he?

A. He has two grown up, and two young ones; he has a son not yet gone to college.

Q. Did not other ladies dine at Lord Headfort's when Mrs. Massy dined there?

A. I have seen other ladies also dine there on these occasions, and also at the bishop's house.

Q. How nearly connected is the bishop's wife to Mrs. Massy?

A. She is her sister.

Q. The bishop's is next door to Lord Limerick's, where Lord Headfort resided?

A. It is.

Q. Is it not natural from the ill state of the bishop's health, that her sister should have attended her?

A. It was, in my opinion, perfectly natural.

Q. Do you conceive that a woman living next door to a man of fifty, would be equally criminal in visiting him, as she would be a man of 25?

A. I do not think there is much difference.

Q. Were there not many ladies of distinction present at these dinners?

A. There were.

Q. Give me leave, colonel, to ask what do you call "marked attentions;" for instance, if a gentleman should ask a lady, "madam, permit me to pour a little melted butter on your greens," or if he should ask her to take a glass of wine with him, would you call these marked attentions?

A. No.

Q. Pray, colonel, be so good as to show the manner in which it should be done?

A. The attentions were such as to make her smile.

Q. Do you not believe that Mrs. Massy is now living with the marquis in England, publicly?

A. I believe she is.

Q. Do you not believe that he bore her off in his own carriage publicly, without disguise?

A. Yes, I heard it, and I believe it.

GEORGE EVANS BRUCE, *Esq. examined by Mr. GOOLD.*

Q. Are you acquainted with Mrs. Massy?

A. I am.

Q. How long?

A. Very long with Mr. Massy—since marriage only, with Mrs. Massy.

Q. How long have you known Lord Headfort?

A. Six or seven years.

Q. Did Lord Headfort know plaintiff before he came to Limerick?

A. No.

Q. Had you any opportunities of knowing Mrs. Massy and Lord Headfort?

A. Many.

Q. Did Lord Headfort pay attentions to Mrs. Massy?

A. He did.

Q. Were they the same as he paid other ladies?

A. No. They were "marked attentions."

Q. When did Lord Headfort first see Mrs. Massy?

A. First time I ever saw them together was before the races of Limerick, at dinner at the bishop's.

Q. Were you last summer at the races of Mallow?

A. I was.

Q. Was Lord Headfort there?

A. He was; I saw him with Mrs. Massy at the assembly.

Q. Did Mr. Massy go with her?

A. He did. He left her there the first period, and went away.

Q. Did Mrs. Massy go to the public rooms while at Mallow?

A. I met her there.

Q. Did you observe Mrs. Massy expensively dressed?

A. About six weeks before her elopement, she wore very expensive trinkets, particularly a large necklace and earrings—I think a topaz.

Q. Did her husband observe them?

A. He must.

Q. Did Mr. Massy observe those attentions?

A. He was present when I saw what I considered *attentions*.

Q. Did you take any step to inform Mr. Massy of those attentions?

A. In consequence of what Mrs. Massy told me, I informed her sister, and the bishop and his brother, of her intention to elope?

Q. After this information, was Lord Headfort allowed to visit Mrs. Massy?

A. He was.

Q. Did the bishop do any thing in consequence of your information?

A. He wrote a letter, addressed to Mr. Massy, which I delivered to him.*

Q. Did Lord Headfort see her after that, and where?

A. Yes, he did, at Summerhill, at her husband's house.

Q. Do you remember her returning from Limerick with him in his carriage to Summerhill *tete-a-tete*?

A. I do. When I saw them they were *tete-a-tete*.

Q. Was this before or after the delivery of the letter?

A. Before.

Cross-examined by Mr. CURRAN.

Q. You are an intimate friend of Lord Headfort's?

A. Of late very intimate, since he came to Limerick; but before that, I knew him during the rebellion at Waterford.

Q. How long before the elopement, did you know of its likelihood to take place?

A. About two months.

Q. How long before in consequence of what Lord Headfort told you?

A. He never spoke to me on the subject.

Q. Did you know it would take place the day it did?

A. I did not.

Q. Did you know of any preparation for it—carriages, horses, &c.

A. I did not—but Lord Headfort did call on me that Sunday, as he used to do, with a carriage.

* The letter was only delivered on the Friday before the elopement, which took place on the Sunday following. It was couched in general terms, and merely requested that the plaintiff, Mr. Massy, would call on him (the bishop) as soon as possible on particular business. This he could not comply with, until the Sunday, on which, during his absence, the elopement took place. It is to be observed also, that many circumstances stated by defendant's counsel were not even attempted to be proved.

Q. Were any horses put up in your stable that day?

A. There were two.

Q. Was not Mrs. Massy always neat in her dress?

A. Always remarkably so.

Q. What time of day was it when you saw her in the carriage alone with Lord Headfort?

A. In the middle of the day, near Dean Crosbie's.

Q. Was it extraordinary to see a lady with a man of fifty?

A. No.

Q. Was not Mr. Massy highly inflamed when he heard of it?

A. I am sure he was.

Q. Don't you believe he prevented her from going to Limerick after that?

A. I do not. She was in Limerick after that, how often I do not recollect.

Q. Don't you believe Mr. Massy was excessively attached to this unhappy woman?

A. I always thought so.

Q. Don't you believe his harsh reprimand of her proceeded from extreme fondness for her?

A. I always thought he loved her very much.

Q. Was it not his fondness for her made him oppose his father, and sacrifice his prospects for her?

A. I believe it was.

Q. Did Sir Hugh Dillon Massy offer to settle 1,200*l.* a year on him, if he married a lady of his choosing?

A. Sir Hugh could do so, and was disposed to do every thing for his children.

Q. Did the plaintiff forbid Lord Headfort his house?

A. I heard he did, from one gentleman, who said he only heard it, and I believe he did.

Q. You doubt the truth of it, because you saw Lord Headfort at the house?

A. Yes.

Q. Did you know the contents of the bishop's letter?

A. No, I did not.

Q. Is not Limerick a calumniating place, and deals more in poetry than history?

A. Never knew a small town that was not, and Limerick is as much so in proportion as any other.

Q. Would not a reflecting man disbelieve reports of calumny?

A. I think he would, if no reason to the contrary.

Q. Do you believe on your oath, as a man of honour, and in the presence of your country and your God, that plaintiff connived at the conduct of his wife?

A. I believe not—I am sure he was incapable of it—his fault was more of the head than of the heart.

Q. Do you believe that a letter from Mrs. Massy to Mr. Massy, was sent with the privity of Lord Headfort?

A. It was enclosed under cover to me by Lord Headfort, and I sent it to the plaintiff's brother to give to the plaintiff.

Q. Was not the plaintiff fond of his child?

A. Extraordinary fond of it.

Q. Don't you believe he carried his child through fondness to his brother's to prevent his remaining with servants?

A. Yes.

Q. Are not the manners of Mrs. Harvey those of a gentlewoman, and could she corrupt a child of that age?

A. They certainly are those of a gentlewoman.

Defence closed here.

Mr. Ponsonby now spoke in favour of the noble defendant, and took nearly the same grounds as Mr. Quin, intimating that the plaintiff had not been sufficiently attentive to the conduct of his wife. One observation he made has so much truth in it, that we must lay it before our readers:

“If a woman (said he) has long lived with her husband in affection, and discharging, as became her, the duties of her situation, and is seduced, the jury ought to compensate him most amply. If a long supposed friendship is perverted to the seduction of such a wife, the seducer ought to be pu-

aished—the jury ought to be liberal in compensation. It would be well, if society were so perfect, that there could be no danger of such an offence. The truth is, men are more in fault than women. Women are, in all countries, regulated by the conduct of men; and if men will talk with levity—if they will talk lightly of women who have been guilty—if those who are guilty are received into society, it is but natural their own wives should be induced to act the same part those guilty women have acted. It is the husband's conduct with respect to other women—his conduct in society in general—in deportment—in conversation, that can entitle him to damages in an action of this sort.”

After many other shrewd and pertinent observations, Mr. Ponsonby concluded a very sensible speech in the following words :*

The husband comes for compensation for the loss he has sustained in the society of his wife; but, if she would make the same mistake with any other person, this defendant ought not to be punished beyond the proportion of his offence. There is no man so rude or dull as not to understand, that if approaches of a stranger be well received by a married woman, the husband cannot lose much by the loss of her society. The plaintiff here lays his damages at 40,000*l.* a sum never heard of, even in the days of Lord Kenyon, a judge remarkable for the severity of his principles. The truth is, gentlemen of the jury, no woman capable of conduct such as plaintiff's wife has been guilty of, could be worth 40,000*l.* So strange was her conduct, and so negligent was her husband, that one would think it would be almost reason-

* Mr. Ponsonby, in reputation, is at the head of his profession in Ireland; he is not so florid a speaker as Mr. Curran, but he is considered a more substantial lawyer. He also ranks high as a politician, and generally voted on the side of his country. Besides the emoluments of his profession, at least 6,000*l.* a year, he has a considerable estate, is knight of the shire for the county of Wicklow, and is allied to several noble families both in England and Ireland.

able to expect he should have told the defendant, that he valued his wife at 40,000*l*. One begins to think it was not fair in the plaintiff to allow the address of my Lord Headfort to his wife, without giving him some notice that he valued her so high. Had he done so, are you sure, gentlemen, that the defendant would not have withdrawn his assiduities? and this is the only want of candour I impute to the plaintiff. Admitting that defendant's object was the reputation of gallantry, and that plaintiff knew that was the fact, and encouraged it, and wished to make the defendant pay for it, he ought, at least, to have told the defendant he expected 40,000*l*. for his indulgence of him. What! gentlemen of the jury, 40,000*l*. for the seduction of a woman, only four months known to the defendant, previously too successfully assailed by others, and plaintiff the claimant for such a sum, who has been himself guilty of great moral delinquency. I am no advocate for gallantry of this kind; but I would ask you, has there been in this case a long train of seduction? a long friendship violated? or a confiding husband betrayed? If such be the case, punish the defendant—punish him amply. But, on the contrary, if that be not the fact, and the evidence laid before you shows it was not the fact—if plaintiff's own conduct has contributed to his own misfortune, you are not to reward him for it. What is it to the plaintiff that Lord Headfort is a married man? Is his injury the greater? You have nothing to do with the marriage of the defendant—it can make no difference, in point of loss, whether he was so or not. His being separate from his wife is a reason, a strong reason, why the plaintiff should not allow his wife to associate with him.

The plaintiff's counsel have talked of vindictive damages; it is an expression unintelligible to me; they have said he should be made an example for all other adulterers. But, your duty is, to give the damages proportionate to the injuries sustained, and the conduct of the parties—otherwise, you may as well give damages, because others have committed

the same offence, to prevent the repetition of it. If one man had assaulted another so grievously as to put out his eyes, it seems to me it would be equally right in you to give vindictive damages to prevent the repetition of it, as it would be to do so in the present case. But the fact is, each case must rest upon its own merits. You will ask yourselves these questions—Did the plaintiff see his wife dressed in ornaments beyond her means, and which he never supplied? Had he such warning as ought to have been sufficient to put him on his guard? If he had discharged his duty, could he have occasion for bringing this action? The evidence laid before you has given an answer to these questions, and ought to be the rule by which your verdict should be regulated. The liberty happily allowed to women in these countries will often subject the best of husbands to deception; but it is better to allow it, than to have recourse to the horrible and abominable coercions practised in other countries. Here women are their own mistresses, and men are not their own masters. If husbands, acting under the generous feelings that are encouraged in these countries, are deceived, and if foul advantages are taken of them, it is hard to consider any compensation too great for the injury they sustain; but, if the husband not only neglects, but, almost invites, addresses to his wife, he shall not be compensated. What is the law in other cases? Is not the neglect, or want of vigilance, of one's property considered by the law as not entitled to redress? Is not an estate often lost, because the claim has not been made in a reasonable time? and why should it be otherwise in an action like this? Was the plaintiff's conduct prudent and discreet? It has been said, he ordered separate beds for himself and his wife—that he had forbid her, for three weeks, to visit Limerick; and yet, strange to tell, the defendant, during that time, was received at his house. But, suppose the defendant was not received there—supposing the worst that can be said for my client, could not the plaintiff have denied him admittance? could he not have removed, for a

time, to the country with his wife?—The conduct of the plaintiff and his relations was far different. No indignation was expressed among them at the defendant's conduct. He dined often after at plaintiff's brother's house. Could the rigid injunctions of plaintiff on his wife not to visit Limerick, or receive the defendant, be considered serious? Was he not induced to think when he was received at plaintiff's house, after such an injunction, that the whole proceeding was a mockery? The witness said it was a fault of the head and not of the heart of the plaintiff, that occasioned this neglect of his wife—admitted. It was still weakness in the extreme not to discountenance the defendant altogether. If a man is told in words his advances are not welcome, and yet the manner and actions contradict these words, which is to be believed? The defendant knew that plaintiff lived in habits of intimacy with his brother, frequented that brother's house, dined with him, when he well knew that the wife of that brother was banished from her home, and in her place was substituted the mistress of the brother, who sat at the head of his table, and discharged all the duties of the legitimate wife. The plaintiff left his wife alone, spent days, and dined in company with Mrs. Harvey. The plaintiff's being a clergyman has nothing to do with this action. He is no more entitled to damages for that reason than any other man. It makes it only the more incumbent on him to attend to the morals and conduct of his wife.

I do not justify the defendant—I do not accuse the plaintiff of connivance; but I do insist that his own conduct, his own way of life, has occasioned whatever misfortune he has suffered. That this unhappy woman has yielded to the addresses of four months, cannot be disputed. What was the occasion of it? Was it the prospect of marriage? Was it love? No; *twenty-five* does not love *fifty*. Her husband was but twenty-eight—she could not leave

“That fair and fertile plain, to batten on that moor.”

Love might be a strong excuse for such conduct, because it is often too strong for law, virtue, or morality—it becomes entitled, therefore, to human commiseration. But how is it possible to conceive that a woman of twenty-five could, after an acquaintance of four months, be induced, by a violence of love, to throw herself into the arms of a man of fifty? If this husband's conduct was virtuous and vigilant—if his wife's conduct was moral and domestic—and if not, notwithstanding she was seduced from him—if the plaintiff was every thing that was right, and the defendant every thing that was abominable, why, then, give damages. But do not say, that because the defendant is rich—because he is a man of intrigue—because he is a man of gallantry, therefore give vindictive damages. If the breath of slander had never reached this lady, previous to her acquaintance with the defendant, punish the defendant for his seduction; but, on the contrary, if the defendant has been deceived by the husband, and seduced by the wife, as men of sense, consider whether he ought therefore to be punished by vindictive damages.

Mr. CURRAN.* Never so clearly as in the present instance, have I observed that safeguard of justice which Providence has placed in the nature of man. Such is the imperious dominion with which truth and reason wave their sceptre over the human intellect, that no solicitation, however artful, no talent, however commanding, can reduce it from its allegiance. In proportion to the humility of our submission to its rule, do we rise into some faint emulation

* This is thought one of Mr. Curran's best speeches. Those who have been inclined to be very sparing of their praise, and who said that Curran's forte lay entirely in political subjects, will here be convinced, that his genius can take a wider range—indeed, all the speaking on this trial is of a superior order, and must give the impartial reader favourable ideas of the oratorical powers of the Irish bar. The trial itself is so free from any thing that is offensive to modesty, that it may be read with advantage by every sex and every rank, as not only exhibiting the best examples of oratory, but also the best lessons of morality.

of that ineffable and presiding divinity, whose characteristic attribute it is to be coerced and bound by the inexorable laws of its own nature, so as to be *all-wise* and *all-just* from necessity, rather than election. You have seen it in the learned advocate who has preceded me, most peculiarly and strikingly illustrated—you have seen even *his* great talents, perhaps the first in any country, languishing under a cause too weak to carry him, and too heavy to be carried by him. He was forced to dismiss his natural candour and sincerity, and, having no merits in his case, to substitute the dignity of his own manner, the resources of his own ingenuity, over the overwhelming difficulties with which he was surrounded. Wretched client? Unhappy advocate! What a combination do you form! But such is the condition of guilt—its commission mean and tremulous—its defence artificial and insincere—its prosecution candid and simple—its condemnation dignified and austere. Such has been the defendant's guilt—such his defence—such shall be my address—and such, I trust, your verdict. The learned counsel has told you that this unfortunate woman is not to be estimated at 40,000*l*. Fatal and unquestionable is the truth of this assertion. Alas! gentlemen, she is no longer worth any thing—faded, fallen, degraded and disgraced, she is worth less than nothing! But it is for the honour, the hope, the expectation, the tenderness, and the comforts, that have been blasted by the defendant, and have fled for ever, that you are to remunerate the plaintiff, by the punishment of the defendant. It is not her present value which you are to weigh—but it is her value at that time, when she sat basking in a husband's love, with the blessings of heaven on her head, and its purity in her heart—when she sat amongst her family, and administered the morality of the parental board. Estimate that past value—compare it with its present deplorable diminution—and it may lead you to form some judgment of the severity of the injury, and the extent of the compensation.

The learned counsel has told you, you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just, but has he treated you fairly by its application? His cause would not allow him to be fair—for why is the rule adopted in this single action? Because, this being peculiarly an injury to the most susceptible of all human feelings, it leaves the injury of the husband to be ascertained by the sensibility of the jury, and does not presume to measure the justice of their determination by the cold and chilly exercise of its own discretion. In any other action it is easy to calculate. If a tradesman's arm is cut off, you can measure the loss which he has sustained—but the wound of feeling, and the agony of the heart, cannot be judged by any standard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the present suffering of the husband by the present guilt, delinquency, and degradation of his wife. As well might you, if called on to give compensation to a man for the murder of his dearest friend, find the measure of his injury by weighing the ashes of the dead. But it is not, gentlemen of the jury, by weighing the ashes of the dead that you would estimate the loss of the survivor.

The learned counsel has referred you to other cases, and other countries, for instances of moderate verdicts. I can refer you to some authentic instances of just ones. In the next county, 15,000*l.* against a subaltern officer. In *Travers and McCarthy*, 5,000*l.* against a servant. In *Tighe v. Jones*, 1,000*l.* against a man not worth a shilling. What then ought to be the rule where rank, and power, and wealth, and station, have combined to render the example of his crime more dangerous, to make his guilt more odious—to make the injury to the plaintiff more grievous, because more conspicuous? I affect no levelling familiarity, when I speak of persons in the higher ranks of society—distinctions of orders are necessary; and I always feel disposed to treat them with

respect—but when it is my duty to speak of the crimes by which they are degraded, I am not so fastidious as to shrink from their contact, when to touch them is essential to their dissection. In this action, the condition, the conduct, and circumstances of the party, are justly and peculiarly the objects of your consideration. Who are the parties? The plaintiff, young, amiable, of family and education. Of the generous disinterestedness of his heart you can form an opinion, even from the evidence of the defendant, that he declined an alliance, which would have added to his fortune and consideration, and which he rejected for an unportioned union with his present wife. She too at that time young, beautiful and accomplished; and feeling her affection for her husband increase, in proportion as she remembered the ardour of his love, and sincerity of his sacrifice. Look now to the defendant! I blush to name him!—I blush to name a rank which he has tarnished—and a patent that he has worse than cancelled. High in the army—high in the state—the hereditary counsellor of the king—of wealth incalculable—and to this last I advert with an indignant and contemptuous satisfaction, because, as the only instrument of his guilt and shame, it will be the means of his punishment, and the source of compensation for his guilt.

But let me call your attention distinctly to the questions you have to consider. The first is the fact of guilt. Is this noble lord guilty? His counsel knew too well how they would have mortified his vanity, had they given the smallest reason to doubt the splendour of his achievement. Against any such humiliating suspicion, he had taken the most studious precaution by the publicity of the exploit. And here, in this court, and before you, and in the face of the country, he has the unparalleled effrontery of disdaining to resort even to a confession of innocence. His guilt established, your next question is, the damages you should give. You have been told that the amount of damages should depend on circumstances. You will consider these circumstances, whether of aggravation or mitigation. His learned counsel contend, that the plain-

tiff has been the author of his own suffering, and ought to receive no compensation for the ill consequences of his own conduct. In what part of the evidence do you find any foundation for that assertion? He indulged her, it seems, in dress; generous and attached, he probably indulged her in that point beyond his means, and the defendant now impudently calls on you to find an excuse for the adulterer in the liberality of the husband. Odious and impudent aggravation of injury—to add calumny to insult, and outrage to dishonour. From whom, but a man hackneyed in the paths of shame and vice—from whom, but from a man having no compunctions in his own breast to restrain him, could you expect such brutal disregard for the feelings of others—from whom, but the cold-blooded veteran seducer—from what, but from the exhausted mind—the habitual community with shame—from what, but the habitual contempt of virtue and of man, could you have expected the arrogance—the barbarity—the folly of so foul, because so false, an imputation? He should have reflected, and have blushed, before he suffered so vile a topic of defence to have passed his lips.

But, ere you condemn, let him have the benefit of the excuse, if the excuse be true. You must have observed how his counsel fluttered and vibrated—between what they called connivance and injudicious confidence; and how, in affecting to distinguish, they have confounded them both together. If the plaintiff has connived, I freely say to you do not reward the wretch who has prostituted his wife, and surrendered his own honour—do not compensate the pander of his own shame, and the willing instrument of his own infamy. But as there is no sum so low, to which such a defence, if true, you ought not to reduce your verdict, so neither is any so high, to which such a charge ought to inflame it, if such a charge be false. Where is the single fact in this case on which the remotest suspicion of connivance can be hung? Odiously has the defendant endeavoured to make the softest

and most amiable feelings of the human heart the pretext of his slanderous imputations. An ancient and respectable prelate, the husband of his wife's sister, chained down to the bed of sickness, perhaps to the bed of death—in that distressing situation, my client suffered that wife to be the bearer of consolation to the bosom of her sister—he had not the heart to refuse her, and the softness of his nature is now charged on him as a crime. He is now insolently told that he connived at his dishonour, and that he ought to have foreseen that the mansion of sickness and of sorrow would have been the scene of assignation and of guilt. On this charge of connivance, I will not farther weary you or exhaust myself—I will add nothing more, than that it is as false as it is impudent—that in the evidence it has not a colour of support; and that, by your verdict, you should mark it with reprobation.

The other subject, namely, that he was indiscreet in his confidence, does, I think, call for some discussion—for, I trust, you see that I affect not any address to your passions by which you may be led away from the subject—I presume merely to separate the parts of this affecting case, and to lay them *item by item* before you, with the coldness of detail, and not with the colouring or display of fiction or of fancy. Honourable to himself was his unsuspecting confidence, but fatal must we admit it to have been, when we look to the abuse committed upon it; but where was the guilt of this indiscretion? He did admit this noble lord to pass his threshold as his guest. Now the charge which this noble lord builds on this indiscretion is, “thou fool—thou hadst confidence in my honour, and that was a guilty indiscretion—thou simpleton—thou thoughtest that an admitted and cherished guest would have respected the laws of honour and hospitality, and thy indiscretion was guilt! Thou thoughtest that he would have shrunk from the meanness and barbarity of requiting kindness with treachery, and thy indiscretion was guilt!”

Gentlemen what horrid alternative in the treatment of

wives would such reasoning recommend? Are they to be immured by worse than eastern barbarity? Are their principles to be depraved—their passions sublimated, every finer motive of action extinguished by the inevitable consequences of thus treating them like slaves? Or is a liberal and generous confidence in them to be the passport of the adulterer, and the justification of his crimes?

Honourably but fatally for his own repose, he was neither jealous, suspicious, nor cruel. He treated the defendant with the confidence of a friend, and his wife with the tenderness of a husband. He did leave to the noble marquis the physical possibility of committing against him the greatest crime which can be perpetrated against a being of an amiable heart and refined education. In the middle of the day, at the moment of divine worship, when the miserable husband was on his knees, directing the prayers and thanksgivings of his congregation to their God—that moment did the remorseless adulterer choose to carry off the deluded victim from her husband—from her child—from her character—from her happiness—as if, not content to leave his crime confined to its miserable aggravations, unless he also gave it a cast and colour of factitious sacrilege and impiety. Oh! how happy had it been when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which, like the fabled bark of Styx, the exile was eternal; how happy at that moment, so teeming with misery and shame, if you, my lord, had met him, and could have accosted him in the character of that good genius which had abandoned him—how impressively might you have pleaded the cause of the father, of the child, of the mother, and even of the worthless defendant himself. You would have said—“Is this the requital that you are about to make for respect, and kindness, and confidence in your honour? Can you deliberately expose this young man, in the bloom of life, with all his hopes yet before him? Can you expose him, a wretched outcast from society, to the scorn of a merciless world? Can you set him adrift upon the tempestuous ocean of his own passions,

at this early season, when they are most headstrong? and can you cut him out from the moorings of those domestic obligations, by whose cable he might ride at safety from their turbulence? Think of, if you can conceive it, what a powerful influence arises from the sense of home—from the sacred religion of the hearth in quelling the passions, in reclaiming the wanderings, in correcting the disorders of the human heart; do not cruelly take from him the protection of these attachments.

“ But if you have no pity for the father, have mercy at least upon his innocent and helpless child; do not condemn him to an education scandalous or neglected—do not strike him into that most dreadful of all human conditions, the orphanage that springs not from the grave, that falls not from the hand of Providence, or the stroke of death; but comes before its time, anticipated and inflicted by the remorseless cruelty of parental guilt. For the poor victim herself—not yet immolated—while yet balancing upon the pivot of her destiny, your heart could not be cold, nor your tongue be wordless.” You would have said to him, “ Pause, my lord, while there is yet a moment for reflection. What are your motives, what your views, what your prospects from what you are about to do? You are a married man, the husband of the most amiable and respectable of women, you cannot look to the chance of marrying this wretched fugitive—between you and such an event there are two sepulchres to pass. What are your inducements? Is it love, think you? No; do not give that name to any attraction you can find in the faded refuse of a violated bed. Love is a noble and a generous passion—it can be founded only on a pure and ardent friendship—on an exalted respect—on an implicit confidence in its object. Search your heart, examine your judgment, do you find the semblance of any one of these sentiments to bind you to her? What could degrade a mind to which nature or education had given port, or stature, or character, into a friendship for her! Could you repose

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upon her faith? Look in her face, my lord, she is at this moment giving you the violation of the most sacred of human obligations as the pledge of her fidelity—She is giving you the most irrefragable proof, that as she is deserting her husband for you, so she would, without a scruple, abandon you for another. Do you anticipate any pleasure you might feel in the possible event of your becoming the parents of a common child? She is at this moment proving to you that she is as dead to the sense of parental as of conjugal obligation, and that she would abandon your offspring tomorrow, with the same facility with which she now deserts her own. Look then at her conduct, as it is, as the world must behold it, blackened by every aggravation that can make it either odious or contemptible, and unrelieved by a single circumstance of mitigation that could palliate its guilt, or retrieve it from abhorrence.

“Mean, however, and degraded as this woman must be, she will still (if you take her with you) have strong and heavy claims upon you. The force of such claims does certainly depend upon circumstances; before, therefore, you expose her fate to the dreadful risk of your caprice or ingratitude, in mercy to her weigh well the confidence she can place in your future justice and honour; at that future time, much nearer than you think, by what topics can her cause be pleaded to a sated appetite—to a heart that repels her—to a just judgment in which she never could have been valued or respected? Here is not the case of an unmarried woman, with whom a pure and generous friendship may have ripened into a more serious attachment, until at last her heart became too deeply pledged to be reassumed; if so circumstanced, without any husband to betray, or child to desert, or motive to restrain, except what related solely to herself, her anxiety for your happiness made her overlook every other consideration, and commit her history to your honour; in such a case, (the strongest and the highest that man’s imagination can suppose,) in which you at least could see nothing

but the most noble and disinterested sacrifice—in which you could find nothing but what claimed from you the most kind and exalted sentiment of tenderness, and devotion, and respect—and in which the most fastidious rigour would find so much more subject for sympathy than blame. Let me ask you, could you, even in that case, answer for your own justice and gratitude? I do not allude to the long and pitiful catalogue of paltry adventures, in which, it seems, your time has been employed. The coarse and vulgar succession of casual connections, joyless, loveless, and unendeared: but do you not find upon your memory some traces of the character I have sketched? Has not your sense of what you would owe in such a case, and to such a woman, been at least once put to the test of experiment? Has it not, once at least, happened, that such a woman, with all the resolution of strong faith, flung her youth, her hope, her beauty, her talent, upon your bosom—weighed you against the world which she found but a feather in the scale, and took you as an equivalent? How did you then acquit yourself? Did you prove yourself worthy of the sacred trust reposed in you? Did your spirit so associate with hers, as to leave her no room to regret the splendid and disinterested sacrifice she had made? Did her soul find a pillow in the tenderness of yours, and a support in its firmness? Did you preserve her high in her own consciousness, proud in your admiration and friendship, and happy in your affection? You might have so acted; and the man that was worthy of her would have perished rather than not so act as to make her delighted with having confided so sacred a trust to his honour—did you so act? Did she feel that, however precious to your heart, she was still more exalted and honoured in your reverence and respect? Or, did she find you coarse and paltry, fluttering and unpurposed, unfeeling and ungrateful? You found her a fair and blushing flower, its beauty and its fragrance bathed in the dews of Heaven. Did you so tenderly transplant it as to preserve that beauty and fragrance unimpaired? Or did you so rudely cut it as to

interrupt its nutriment, to waste its sweetness, to blast its beauty, to bow down its faded and sickly head? And did you at last fling it "like a loathsome weed away?" If then to such a woman, so clothed with every title that could ennoble, and exalt, and endear her to the heart of man, you could be cruelly and capriciously deficient, how can a wretched fugitive like this, in every point her contrast, hope to find you just? Send her then away—send her back to her home, to her child, to her husband, to herself." Alas!—there was none to hold such language to this noble defendant; he did not hold it to himself—but he paraded his despicable prize in his own carriage, with his own retinue, his own servants—this veteran Paris hawked his enamoured Helen from the western quarter of the island to a sea-port in the eastern, crowned with the acclamations of a senseless and grinning rabble, glorying and delighted, no doubt, in the leering and scoffing admiration of grooms, and ostlers, and waiters, as he passed!

In this odious contempt of every personal feeling, of public opinion, of common humanity, did he parade this woman to the sea-port, whence he transported his precious cargo to a country where her example may be less mischievous than in her own; where I agree, with my learned colleague, in heartily wishing he may remain with her for ever. We are too poor, too simple, too unadvanced a country, for the example of such achievements. When the relaxation of morals is the natural growth and consequence of the great progress of arts and wealth, it is accompanied by a refinement that makes it less gross and shocking: but for such *palliations* we are at least a century too young. I advise you, therefore, most earnestly, to rebuke this budding mischief, by letting the wholesome vigour and chastisement of a liberal verdict speak what you think of its enormity. In every point of view in which I can look at the subject, I see you are called upon to give a verdict of bold, and just, and indignant, and-exemplary compensation. The injury of the plaintiff demands it from your

justice. The delinquency of the defendant provokes it by its enormity. The rank on which he has relied for impunity calls upon you to tell him that crime does not ascend to the rank of the perpetrator, but the perpetrator sinks from his rank, and descends to the level of his delinquency.

The style and mode of his defence is a gross aggravation of his conduct, and a gross insult upon you. Look upon the different subjects of his defence, as you ought, and let him profit by them as he deserves; vainly presumptuous upon his rank, he wishes to overawe you by the despicable consideration. He next resorts to a cruel aspersion upon the character of the unhappy plaintiff, whom he had already wounded beyond the possibility of reparation; he has ventured to charge him with connivance: as to that, I will only say, gentlemen of the jury, do not give this vain boaster a pretext for saying, that if the husband connived in the offence, the jury also connived in the reparation. But he has pressed another curious topic upon you: after the plaintiff had cause to suspect his designs, and the likelihood of their being fatally successful, he did not act precisely as he ought. Gracious God! what an argument for him to dare to advance. It is saying this to him: "I abused your confidence, your hospitality; I laid a base plan for the seduction of the wife of your bosom; I succeeded at last, so as to throw in upon you that most dreadful of all suspicions to a man fondly attached, proud of his wife's honour, and tremblingly alive to his own; that you were possibly a dupe to the confidence in the wife, as much as in the guest. In this so pitiable distress, which I myself had studiously and deliberately contrived for you, between hope and fear, and doubt and love, and jealousy and shame, one moment shrinking from the cruelty of your suspicion; the next fired with indignation at the facility and credulity of your acquittal; in this labyrinth of doubt, in this frenzy of suffering, you were not collected and composed; you did not act as you might have done, if I had not worked you to madness; and upon that very madness which I have inflicted upon you, upon the very completion of my guilt, and

your misery, I will build my defence. You did not act critically right, and therefore are unworthy of compensation."

Gentlemen, can you be dead to the remorseless atrocity of such a defence, and shall not your honest verdict mark it as it deserves? But let me go a little further; let me ask you, for I confess I have no distinct idea of what should have been the conduct of a husband so placed, and who is to act critically right? Shall he lock her up, shall he turn her out, or enlarge or abridge her liberty of acting as she pleases? Oh, dreadful Areopagus of the tea-table! How formidable thy inquests, how tremendous thy condemnations! In the first case, he is brutal and barbarous, an odious eastern despot. In the next, what! turn an innocent woman out of his house, without evidence or proof, but merely because he is vile and mean enough to suspect the wife of his bosom, and the mother of his child. Between these extremes, what intermediate degree is he to adopt? I put this question to you; do you at this moment, uninfluenced by any passion as you now are, but cool and collected, and uninterested as you must be, do you see clearly this proper and exact line which the plaintiff should have pursued? I much question if you do. But if you did, or could, must you not say that he was the last man from whom you should expect the coolness to discover, or the steadiness to pursue it? And yet this is the outrageous and insolent defence that is put forward to you. My miserable client, when his brain was on fire, and every fiend of hell was let loose upon his heart, should then, it seems, have placed himself before his mirror; he should have taught the stream of agony to flow decorously down his forehead; he should have composed his features to harmony; he should have writhed with grace, and groaned in melody.

But look farther to this noble defendant, and his honourable defence; the wretched woman is to be successively, the victim of seduction and slander. She, it seems, received "marked attentions"—here, I confess, I felt myself not a little at a loss. The witness could not describe what these

"marked attentions" were, or are. They consisted not, if you believe the witness that swore to them, in any personal approach or contact whatsoever—nor in any unwarrantable topics of discourse. Of what materials then were they composed? Why, it seems, a gentleman had the insolence at table to propose to her a glass of wine, and she, Oh! most abandoned lady, instead of flying like an angry parrot at his head, and besmirching and bescratching him for his insolence, tamely and basely replies, "port, Sir, if you please."

But, gentlemen, why do I advert to this folly, this nonsense? Not, surely, to vindicate from censure the most innocent and the most delightful intercourse of social kindness, of harmless and cheerful courtesy—"where virtue is, these are most virtuous." But I am soliciting your attention, and your feeling, to the mean and odious aggravation—to the unblushing and remorseless barbarity, of falsely aspersing the wretched woman he had undone. One good he has done; he has disclosed to you the point in which he can feel; for how imperious must that avarice be which could resort to so vile an expedient of frugality? Yes, I will say, that, with the common feelings of a man, he would have rather suffered his 40,000/ a year to go as compensation to the plaintiff, than saved a shilling of it by so vile an expedient of economy. He would rather have starved with her in a gaol, he would rather have sunk with her in the ocean, than have so vilified her—than have so degraded himself. But it seems, gentlemen, and indeed you have been told, that long as the course of his gallantries have been, and "he has grown gray in the service," it is the first time he has been called upon for damages—to how many might it have been fortunate if he had not that impunity to boast? Your verdict will, I trust, put an end to that encouragement to guilt that is built upon impunity—the devil, it seems, has saved the noble marquis harmless in the past; but your verdict will tell him the term of that indemnity is expired, that his old friend and banker has no more effects in his hands, and that if he draws any more

upon him he must pay his own bills himself. You will do much good by doing so; you may not enlighten his conscience, nor touch his heart; but his frugality will understand the hint. It will adopt the prudence of age, and deter him from pursuits, in which, though he may be insensible of shame, he will not be regardless of expense. You will do more, you will not only punish him in his tender point, but you will weaken him in his strong one, his money.

We have heard much of this noble lord's wealth, and much of his exploits, but not much of his accomplishments, or his wit. I know not that his verses have soared even to the poet's corner. I have heard it said, that an ass laden with gold could find his way through the gate of the strongest city; but, gentlemen, lighten the load upon his back, and you will completely curtail the faculty of a grave animal, whose momentum lies not in agility, but his weight; not in the quantity of motion, but in the quantity of his matter. There is another ground on which you are called upon to give most liberal damages, and that has been laid by the unfeeling vanity of the defendant. This business has been marked by the most elaborate publicity. It is very clear that he has been allured by the glory of the chase, and not the value of the game. The poor object of his pursuit could be of no value to him, or he could not have so wantonly, and cruelly, and unnecessarily abused her. He might have kept this unhappy intercourse an unsuspected secret. Even if he wished for her elopement, he might easily have so contrived it that the place of her retreat would be profoundly undiscoverable; though even the expense, a point so tender to his delicate sensibility of concealing, could not be 1-40th of the cost of publishing her, his vanity decided him in favour of glory and publicity. By that election he has, in fact, put forward the Irish nation, and its character, so often and so variously calumniated, upon its trial before the tribunal of the empire; and your verdict will this day decide whether an Irish jury can feel, with justice and spirit, upon a subject that involves conjugal

affection and comfort, domestic honour and repose—the certainty of issue—the weight of public opinion—the gilded and presumptuous criminality of overweening rank and station. I doubt not but he is, at this moment, reclined on a silken sofa, anticipating that submissive and modest verdict by which you will lean gently on his error; and expecting from your patriotism, no doubt, that you will think again and again, before you condemn any great portion of the immense revenue of a great absentee to be detained in the nation that produced it, instead of being transmitted, as it ought, to be expended in the splendour of another country. He is now, probably, waiting for the arrival of the report of this day, which, I understand, a famous note-taker has been sent hither to collect. (Let not the gentleman be disturbed.)

Gentlemen, let me assure you it is more, much more, the trial of you, than of this noble marquis, of which this imported recorder is at this moment collecting the materials. His noble employer is now expecting a report to the following effect:—"Such a day came on to be tried, at Ennis, by a special jury, the cause of Charles Massy against the most noble the Marquis of Headfort. It appeared that the plaintiff's wife was young, beautiful, and captivating. The plaintiff himself a person fond of this beautiful creature to distraction, and both doating on their child; but the noble marquis approached her—the plume of glory nodded on his head! Not the goddess Minerva, but the goddess Venus, had lighted upon his casque, 'the fire that never tires—such as many a lady gay had been dazzled with before.' At the first advance she trembled, at the second she struck to the redoubted son of Mars, and pupil of Venus. The jury saw it was not his fault—(it was an *Irish* jury)—they felt compassion for the tenderness of the mother's heart, and for the warmth of the lover's passion. The jury saw on the one side a young, entertaining gallant, on the other a beauteous creature, of charms irresistible. They recollected that Jupiter had been always successful in his amours, although Vulcan had not always

escaped some awkward accidents. The jury was composed of fathers, brothers, husbands—but they had not the vulgar jealousy, that views little things of that sort with rigour, and wishing to assimilate their country in every respect to *England*, now that they are united to it, they, like *English* gentlemen, returned to their box, with a verdict of sixpence damages, and sixpence costs.” Let this be sent to England. I promise you, your odious secret will not be kept better than that of the wretched Mrs. Massy. There is not a bawdy chronicle in London, in which the epitaph, which you would have written on yourselves, will not be published, and our enemies will delight in the spectacle of our precious depravity, in seeing that we can be rotten before we are ripe. But, I do not suppose it, I cannot, will not, believe it; I will not harrow up myself with the anticipated apprehension.

There is another consideration, gentlemen, which I think demands even a vindictive award of exemplary damages, and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity, or convention—in savage nations of the first, in polished of the latter; but the hospitality of an Irishman is not the running account of posted and ledgered courtesies, as in other countries—it springs, like all his qualities, his faults, his virtues—directly from his heart. The heart of an Irishman is by nature bold, and he confides—it is tender, and he loves—it is generous, and he gives—it is social, and he is hospitable. This sacrilegious intruder has profaned the religion of that sacred altar, so elevated in our worship, so precious to our devotion, and it is our privilege to avenge the crime. You must either pull down the altar, and abolish the worship, or you must preserve its sanctity undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This defendant has been so trusted, has so betrayed, and you ought to make him a most signal example.

Gentlemen, I am the more disposed to feel the strongest indignation and abhorrence at this odious conduct of the defendant, when I consider the deplorable condition to which he has reduced the plaintiff, and perhaps the still more deplorable one that he has in prospect before him. What a progress has he to travel through before he can attain the peace and tranquillity which he has lost? How like the wounds of the body are those of the mind! How burning the fever! How painful the suppuration; how slow, how hesitating, how relapsing, the progress to convalescence!—Through what a variety of suffering, what new scenes and changes must my unhappy client pass, ere he can reattain, should he ever reattain, that health of soul of which he has been despoiled by the cold and deliberate machinations of this practised and gilded seducer? If, instead of drawing upon his incalculable wealth for a scanty retribution, you were to stop the progress of his despicable achievements, by reducing him to actual poverty, you could not, even so, punish him beyond the scope of his offence, nor reprove the plaintiff beyond the measure of his suffering. Let me remind you, that, in this action, the law not only empowers you, but that its policy commands you, to consider the public example, as well as the individual injury, when you adjust the amount of your verdict. I confess, I am most anxious that you should acquit yourselves worthily upon this important occasion. I am addressing you as fathers, husbands, brothers. I am anxious that a feeling of those high relations should enter into, and give dignity to your verdict. But, I confess it, I feel a tenfold solicitude, when I remember that I am addressing you as my countrymen, as *Irishmen*, whose characters, as jurors, as gentlemen, must find either honour or degradation in the result of your decision. Small as must be the distributive share of that national estimation that can belong to so unimportant an individual as myself, yet do I own I am tremblingly alive for its fate. Perhaps it appears of more value to me, because it is embarked on the same bot-

tom with yours—perhaps the community of peril, of common safety, or common wreck, gives a consequence to my share of the risk, which I could not be vain enough to give it, if it were not raised to it by that mutuality. But why stoop to think at all of myself when I know that you, gentlemen of the jury, when I know that our country, itself, are my clients on this day, and must abide the alternative of honour, or of infamy, as you shall decide. But I will not despond, I will not dare to despond. I have every trust, and hope, and confidence in you. And, to that hope, I will add my most fervent prayer to the God of all truth and justice, so to raise, and enlighten, and fortify your minds, that you may so decide as to preserve to yourselves while you live the most delightful of all recollections, that of acting justly, and to transmit to your children the most precious of all inheritances, the memory of your virtue.

Hon. Baron Smith. Gentlemen of the jury, after the long and serious demands which this trial has already made on your attention, (rendered the less irksome by the brilliant displays of eloquence which we have witnessed,) I am sorry it has fallen to my lot to trespass farther on your patience: nor shall I do so in any greater degree than is prescribed to me by the duties of my situation: considering the importance of the question which you are to decide, and the large amount of the damages which the plaintiff claims.

I shall set out by informing you, to the best of my knowledge, of the legal doctrines which are applicable to actions of the description of this which is on trial: and shall then proceed to sum up the evidence which has been given, without feeling it necessary to interrupt the recapitulation by any general remarks. In short, I shall leave it to you to apply to the facts of the case (of which you are the proper judges) those preliminary statements of law which I shall have made.

In the first place, I feel myself not only warranted, but bound, to apprise you of a principle, which I find laid down in books of high authority, and modern law. The principle is—that

this sort of action partakes of the nature of penal prosecution, and that large and exemplary damages are usually awarded. The rigour of the above doctrine (it must however be observed) is regulated and restrained by a variety of qualifications; and appears to be so diluted and softened, that it amounts at last to little more than this, that where the plaintiff's right of action is indisputable, and the injury which he hath sustained is manifestly great—and where (as must always be the case) it is impossible to calculate, with exact precision, the amount in pounds, shillings, and pence, of the value of those comforts of which he has been deprived—there juries should not be parsimonious in the damages which they award; but, on the contrary, should be liberal to a degree bordering on prodigality and profusion, for the benefit of public example, and the protection of public morals. This part of the question may, perhaps, be illustrated by a familiar usage in the case of assaults. An assault is at once a civil injury, for which the sufferer has a right to be retributed in damages—and it is an offence, for which the aggressor is liable to punishment. If he be convicted on an indictment for the misdemeanor, the practice is, for the crown judge to ascertain whether the prosecutor intends to bring an action. If not, a punishment is inflicted commensurate to the crime. Otherwise, a lenient and inadequate sentence is pronounced. In this latter case, the verdict of a record jury is, in some measure, substituted for the judgment of a criminal court. To apply this—adultery is a crime, not indeed of temporal cognisance, but punishable by the spiritual law, which is part of the law of the land. But, proceedings of such a nature in the spiritual courts, having become so unusual as to be nearly obsolete, perhaps we may, by a fair analogy, consider the transaction as indirectly subject to the animadversion of the jury which tries the civil action.

We must not, however, carry this principle too far. We must not forget, first, that ours is a mere civil tribunal; or, secondly, that adultery is no crime of temporal cognisance. If it were, that would not be law which we know is law.

The law is, that if the jury be convinced, from the conduct of the plaintiff, that he was consenting to the infamy of his wife, they are bound, in such circumstances, to find a verdict for the defendant. Now this could never be the case, if their province were to punish adultery as a crime, since it is plain that the guilt of the defendant would not be diminished by the plaintiff's having been accessory to his offence. Thus, the position to which I have adverted can only admit of the interpretation which I have given it, viz. that where it is (as in every such action it must be) difficult to make the value of the plaintiff's loss a subject of pecuniary calculation, there it shall be competent to the jury to take the advancement of public morality into their consideration. But they must make it a matter of collateral and subordinate consideration—they must recollect, that they are not sitting on the crown side; but that their main or rather their only province is, to decide on a violation of the private rights of parties.

The civil injury for which the plaintiff is entitled to compensation, is the wound given to his feelings and happiness as a husband; and, therefore, the damages should be proportioned to its poignancy and extent. Accordingly, these are susceptible of aggravation, or mitigation, on various grounds, which are all, in fact, merely detailed applications of the principle which I have mentioned last, namely, that the degree of injury sustained is the proper standard for measuring the amount of the compensation.

The first ground which I shall notice—as one upon which the jury may compute, and justify, the quantum of damages which they award—is the rank and situation of the plaintiff.

Nor does this rule trench on the impartial character of our law, or hold out different measures of justice to the rich and to the poor. It merely provides that the severer the injury is, the greater shall be the retribution. Virtue is far from being peculiar to the higher ranks; but there is, perhaps, a delicacy of sentiment, and punctilio of honour engen-

dered by the refined habits which belong to opulence and distinction, and which sharpen the sting of such an injury as this. Besides, the more exalted is the sphere, the more are those who move in it exposed to observation, and consequently the more must such be injured by an aggression which subjects the sufferer to scorn.

The fortune of the defendant supplies another consideration, by which, estimating damages, a jury might be guided. Not that they ought to more than compensate a plaintiff, merely because the defendant happened to be rich. This would be to violate the maxim which we have laid down—that the damages awarded should bear a proportion to the injury sustained. But a jury, in the case of an indigent defendant, may be disposed to give a plaintiff less than the value of what he has lost, rather than, by awarding adequate compensation, doom him who is to make it to imprisonment for life. Where the aggressor is in affluent circumstances, they will be relieved from such humane difficulties, and may find damages commensurate to the injury which has been sustained.

It is also the duty of the jury to inquire whether the criminal intercourse has, or has not, been the consequence of a preceding seduction of the wife. As evidence of this, they should examine her previous character and conduct, and may found their estimate of damages on such investigation. They may also take into account the connection which subsisted between the parties, and ascertain how far it involved those rights of hospitality or friendship, which might justify the plaintiff in being less circumspect and suspicious, and reposing the greater confidence, in the person who betrayed it. To the same head I would refer the age of the defendant, and the circumstances of his being married. It would be injurious to morals to discourage that greater reliance, which it is natural to place on an aged, and married, than on a younger, and a single man. The duties and attachments which may be supposed to belong to the married state—and the bodily infirmities, the extinguished passions, and confirmed and settled morality which should

belong to age, are so many securities for the honour of a husband, and justify the confidence which they inspire. If, however, these securities should appear in proof to have been lessened, by the gallantries of a defendant, by his reputation in this respect, and by the footing on which he lived with his own wife; a jury would be bound to throw these latter considerations into the opposite scale.

The injured husband's obligation by settlement or otherwise to provide for the issue of that marriage whose rights have been encroached on, is also a fit object of inquiry for the jury. Neither, indeed, can I conceive a more malignant source of agony to a feeling heart—a greater exasperation of the pain of that wound, to whose poignancy the compensation should be proportioned, than must arise from the perplexing doubt in a supposed father's mind, whether the child who shares his caresses—who is to inherit his possessions—for whom he is bound to provide—to whose advancement he has devoted his industry and his talents, has any natural and just claim to this parental care; whether it be a pledge of his wife's past affection for himself, or the offspring and memorial of her infidelity and his own disgrace.

If the complainant has had criminal connections with other women, his damages shall be curtailed on this account; both because these connections negative the existence of a high degree of matrimonial comfort, and because such dissipation and neglect is calculated to set an ill example to the woman—it tends to sap her morals, to estrange her affections, and facilitate her seduction. Therefore, though he have not actually been unfaithful, yet, by associating with women of forfeited or sullied honour, he may diminish his claim to damages, if this association has fallen under the eye of his wife, and has arisen not from peculiarity of circumstance, but from laxity of principle.

Again, in ascertaining the damages to which such a plaintiff is entitled, his having treated his wife with tenderness or harshness, their having lived on terms of harmony or discord, (let the fault have lain where it may,) are proper subjects of at-

tention for a jury ; for the gist of the action is, the husband's loss of the comfort and society of his wife, and this comfort must be in proportion to their mutual cordiality and attachment. Indeed, where this affection appears by the evidence to have amounted to that engrossing and subjugating sentiment called love, the keenness of the wound is infinitely augmented, and the amount of the compensation should be proportionably increased.

We have already seen that where a husband connives at the infidelity of his wife, the effect shall be, not only to diminish his compensation, but to destroy his right of action altogether, and disentitle him to any verdict whatsoever ; and this on one or both of the following grounds : First, that *volenti non fit injuria* ; secondly, that a profligate accomplice in his wife's dishonour forfeits his rights to the protection of the court. But there may be a levity in the husband's behaviour, and a culpable inattention to the conduct of his wife, which, not amounting to a consent to her infamy, shall not, indeed, disentitle him to a verdict, but which, having probably contributed to her seduction, shall mitigate the damages which are awarded to him.

It has been argued in the present case, that if any such negligence existed, it arose (to adopt the language of one of the witnesses) "not from the fault of the heart, but of the head." The excuse is founded in misapprehension. If the inattention arose from the fault of the heart, it would amount to connivance ; and destroy the plaintiff's right of action altogether. When the neglect arises only from an error of the head, it leaves him a right of action ; but is evidence admissible in mitigation of damages. Otherwise a snare would be laid for the defendant ; who, judging of the plaintiff's motive by his conduct, might suppose that he intended to connive, and was an accommodating husband, not from inadvertence, but design.

At the same time, towards entitling a plaintiff to recover largely, we must not require that he should have been a

Spanish or an Oriental husband. We must recollect the freedom which our customs allow to females; and not lay down a rule so rigorous as this: that the rights of every married man may be invaded, whose conduct is not a system of suspicion and control; exposing the jealous spy to public derision; and degrading the woman who is the object of his distrust; offending her pride, and alienating her affections.

It should suffice, that he does not negligently overlook behaviour which ought to excite the vigilance of a man duly attentive to his wife's honour. The law invests every husband with certain privileges and authorities; and if he will not use them for his own protection, he must forfeit a part of his claim to damages, as the reasonable consequence of his default. It is the vigilant, not the indolent, whom the law assists.

There are but two observations more which I have to make. First, that if, in measuring the damages, public morals and example should be at all taken into the question, we must remember, that plaintiffs as well as defendants are subject to the infirmities and depravities of our imperfect nature. We must, therefore, take care how, by awarding damages to an enormous amount, we hold out a temptation to the unprincipled husband, dissembling his own connivance, to wink, however, at his wife's dishonour, when he finds that her infamy will bring so high a price.

The second and last remark which I have to trouble you with, is this, that you will be the more scrupulous in measuring the compensation which you award—because, if you grant too much, it is improbable that your error can ever be corrected; it being the established practice, if it be not the undoubted law, that in actions of this nature, however high the damages which are found may be, the verdict cannot be set aside on the mere ground of their being excessive.

Baron Smith then proceeded to recapitulate the evidence, as it appeared upon his notes; and having done so, closed his charge, without any farther observations on the law.

The trial lasted twelve hours; verdict for the plaintiff, 10,000*l.* at 12 o'clock at night, with costs.*

COUNSEL for the plaintiff: Messrs. Curran, Hoare, Grady, Casey, White, Hawkesworth, O'Regan, Lloyd, M'Mahon and Bennet. Agent, Mr. A. Hogan.

COUNSEL for the defendant: Messrs. Ponsonby, Quin, Goold, Franks, Burton and Penefather. Agent, Mr. J. Sims.

* Dr. Franklin somewhere tells a good story of a certain young man who, having got some money into his possession, bought a whistle with which he disturbed the neighbourhood. My Lord Headfort, considering his age and gray hairs, certainly gave too much for his whistle; ten thousand pounds damages, and costs of suit, with jewels and presents to the lady; he also settled upon her 1,000*l.* per ann. In return for all which, when the lady had been about six weeks in London, she forsook her old lover, and went off with a young officer of the guards!—" *Quantum est in rebus inane.*"

SPEECH

**OF MR. CURRAN, ON THE RIGHT OF ELECTION OF LORD MAYOR
OF DUBLIN, DELIVERED BEFORE THE LORD LIEUTENANT
AND PRIVY COUNCIL OF IRELAND, 1790.**

MY LORDS,

I HAVE the honour to appear before you as counsel for the commons of the corporation of the metropolis of Ireland, and also for Mr. Alderman Howison, who hath petitioned for your approbation of him as a fit person to serve as lord mayor, in virtue of his election by the commons to that high office; and in that capacity I rise to address you on the most important subject that you have ever been called upon to discuss. Highly interesting and momentous indeed, my lords, must every question be, that, even remotely and eventually, may affect the well being of societies, or the freedom, or the repose of nations; but that question, the result of which by an immediate and direct necessity, must decide, either fatally, or fortunately, the life or the death of that well being, of that freedom and that repose, is surely the most important subject on which human wisdom can be employed, if any subject on this side the grave can be entitled to that appellation.

You cannot, therefore, my lords, be surprised to see this place crowded by such numbers of our fellow citizens; here-
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tofore they were attracted hither by a strong sense of the value of their rights, and of the injustice of the attack upon them; they felt all the magnitude of the contest; but they were not disturbed by any fear for the event; they relied securely on the justice of their cause, and the integrity of those who were to decide upon it. But the public mind is now filled with a fear of danger, the more painful and alarming, because hitherto unforeseen; the public are now taught to fear that their cause may be of doubtful merits, and disastrous issue; that rights which they considered as defined by the wisdom, and confirmed by the authority, of written law, may now turn out to be no more than ideal claims, without either precision or security; that acts of parliament themselves are no more than embryos of legislation, or at best but infants, whose first labours must be, not to teach, but to learn; and which even after thirty years of pupillage, may have thirty more to pass under that guardianship, which the wisdom of our policy has provided for the protection of minors. Sorry am I, my lords, that I can offer no consolation to my clients on this head; and that I can only join them in bewailing that the question, whose result must decide upon their freedom or servitude, is perplexed with difficulties of which we never dreamed before, and which we are now unable to comprehend. Yet surely, my lords, that question must be difficult, upon which the wisdom of the representative of our dread sovereign, aided by the learning of his chancellor and his judges, assisted also by the talents of the most conspicuous of the nobles and the gentry of the nation, has been twice already employed, and employed in vain. We know, my lords, that guilt and oppression may stand irresolute for a moment ere they strike, appalled by the prospect of danger, or struck with the sentiment of remorse; but to you, my lords, it were presumption to impute injustice: we must therefore suppose that you have delayed your determination, not because it was dangerous, but because it was difficult, to decide; and indeed, my lords, a firm belief of this difficulty, however undiscoverable by or-

dinary talents, is so necessary to the character which this august assembly ought to possess, and to merit from the country, that I feel myself bound to achieve it by an effort of my faith; if I should not be able to do so by any exertion of my understanding.

In a question, therefore, so confessedly obscure as to baffle so much sagacity, I am not at liberty to suppose that certainty could be attained by a concise examination. Bending, then, as I do, my lords, to your high authority, I feel this difficulty as a call upon me to examine it at large; and I feel it as an assurance, that I shall be heard with patience.

The lord mayor of this city hath from time immemorial been a magistrate, not appointed by the crown, but elected by his fellow citizens. From the history of the early periods of this corporation, and a view of its charters and by-laws, it appears that the commons had, from the earliest periods, participated the important right of election to that high trust; and it was natural and just that the whole body of citizens, by themselves, or their representatives, should have a share in electing those magistrates who were to govern them, as it was their birth-right to be ruled only by laws which they had a share in enacting.

The aldermen, however, soon became jealous of this participation, encroached by degrees upon the commons; and at length succeeded in engrossing to themselves the double privilege of eligibility and of election; of being the only body out of which, and by which, the lord mayor could be chosen. Nor is it strange that in those times a board, consisting of so small a number as twenty-four members, with the advantages of a more united interest, and a longer continuance in office, should have prevailed, even contrary to so evident principles of natural justice and constitutional right, against the unsteady resistance of competitors, so much less vigilant, so much more numerous, and, therefore, so much less united. It is the common fate of the indolent to see their rights become

a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.

In this state of abasement the commons remained for a number of years; sometimes supinely acquiescing under their degradation; sometimes, what was worse, exasperating the fury, and alarming the caution, of their oppressors, by ineffectual resistance: The slave that struggles without breaking his chain, provokes the tyrant to double it; and gives him the plea of self-defence for extinguishing what, at first, he only intended to subdue.

In the year 1672 it was directed by one of the new rules, made by the lord lieutenant and privy council, under the authority of the act of explanation, that "no person should be capable of serving in the office of lord mayor, until approved of by the lord lieutenant and council;" and this was a power given after the unhappy civil commotions in this country, to prevent any person, who was not a loyal subject, from holding so important a trust; and upon this single ground, namely, *disloyalty*, have you, my lords, any authority to withhold your approbation.

From that time till the year 1759 no farther alteration appears to have taken place in the mode of electing the chief magistrate. At this latter period the act of the 33 G. II. was passed: the occasion and the object of that law are universally known. A city so increased in population, in opulence, and in consequence, could not tamely submit to have its corporate rights monopolized by a few, who were at once the tyrants of the metropolis, and the slaves of the government. Magistrates elected by the board of aldermen, were in fact nominated by the court, and were held in derision and abhorrence by the people. The public peace was torn by unseemly dissensions; and, the authority of the law itself was lost in the contempt of the magistrate. The legislature felt itself called upon to restore the constitution of the city, to restore and

ascertain the rights of the commons, and thereby to redeem the metropolis from the fatal effects of oppression, of servitude, and of anarchy. In saying this, my lords, I am founded on the preamble of the act itself—"Whereas dissensions and disputes have from a dissatisfaction, as to some parts of the present constitution of the corporation of the city of Dublin, arisen, and for some years past subsisted, among several citizens of the said city, to the weakening the authority of the magistrates thereof, who are hereby rendered the less able to preserve the public peace within the said city: Therefore, for remedying the aforesaid mischiefs, and inconveniences, and for restoring harmony and mutual good will among the citizens of the said city, and for preserving peace and good order therein: At the humble petition of the lord mayor, sheriffs, commons, and citizens of the city of Dublin, be it enacted," &c.

Here are stated the mischief acknowledged, and the remedy proposed. With this view, the statute has ascertained the constituent parts of the corporation, their respective members, their rights, and the mode of their election, with so minute and detailed an exactness, as even to enact many of those regulations which stood upon the authority of the new rules, or the ancient charters and by-laws, and in which no alteration whatsoever was intended to be made; and this it did, that the city might not be left to explore her rights by uncertain deduction from obscure or distant sources, but that she might see the whole plan in a single view, comprised within the limits of a single statute, and that so intelligibly to every common understanding, as to preclude all possibility of doubt, and thereby all future danger of cavil or dissension.

For this purpose it enacts, "That the common council of the city of Dublin, consisting of the lord mayor and twenty-four aldermen, sitting apart by themselves as heretofore, and also of the sheriffs of the said city for the time being, and sheriffs' peers, not exceeding forty-eight, and of ninety-six

freemen, who are to be elected into the said common council out of the several guilds or corporations of the said city in manner hereafter mentioned, be, and for ever hereafter shall be, deemed and taken to be the common council of the said city, and the representative body of the corporation thereof."

It then prescribes the mode of electing representatives of the several guilds, and the time of their service, in which the right of the commons is exclusive and without control.

It then regulates the election of sheriffs: The commons nominate eight freemen, the mayor and aldermen elect two from that number.

Then of aldermen: The mayor and aldermen nominate four sheriffs' peers; the commons elect one of them.

And here, my lords, give me leave to observe that this exclusive right of electing their own representatives, and this participation in the election of their magistrates, is given to the popular part of the corporation to be exercised, as all right of suffrage is exercised, by the constitution of this country, that is, according to the dictates of judgment or of affection, and without any authority vested in any human tribunal, of catechising as to the motives that may operate on the mind of a free elector in the preference of one candidate, or the rejection of another.

I will now state to your lordships that part of the statute which relates to the subject of this day.

"And be it enacted by the authority aforesaid, that the name of every person who shall hereafter be elected by the lord mayor and aldermen of the said city, or the usual quorum of them, to serve in the office or place of lord mayor of the said city, shall be returned by them to the commons of the common council of the said city for their approbation; without which approbation such person shall not be capable of serving in the office or place of lord mayor; and if it shall happen, that the said commons shall reject or disapprove of the person so returned to them, the lord mayor and aldermen of the said city, or the usual quorum of them shall, from time

to time, elect another person to serve in the office or place of lord mayor of the said city, and shall from time to time return the name of the person so by them elected to the commons of the common council of the said city for their approbation, and so from time to time until the said commons shall approve of the person returned by the lord mayor and aldermen of the said city, or the usual quorum of them; provided always, that such election into the said office of lord mayor shall be of some person from among the aldermen, and that the commons shall approve of some one person, so elected and returned to them for their approbation.

“And for the preventing the mischiefs and inconveniences which may arise from a failure of the corporation of the said city in the appointment of necessary officers; be it enacted by the authority aforesaid, that if either the lord mayor and aldermen, or the commons of the said city, shall omit or refuse to assemble at or within the usual times for the electing the lord mayor, aldermen and sheriffs respectively; or, being assembled, shall omit or refuse to do what is hereby required to be done by them respectively, for the election and appointment of the said officers; then, and as often as the case shall happen, it shall and may be lawful for the commons in case such default shall be in the lord mayor and aldermen, or for the aldermen, in case such default shall be in the commons, or for the usual quorum of them respectively, without any summons for that purpose, to assemble themselves at the tholsel of the said city on next following day, (not being Sunday,) or in case the same shall happen to be on Sunday, then on the Monday next following, and then and there to elect the said officers respectively as the case shall require; and every such election, so made, shall and is hereby declared to be valid and effectual to all intents and purposes.

“Provided always, and be it further enacted by the authority aforesaid, that every election by the said several guilds, for the constituting of their representatives in the common council of the said city, and every election made or appro-

bation given by the commons of the said common council by virtue of this act shall be by ballot, and not otherwise.

“Provided always, that notwithstanding any thing in this act contained, no person or persons shall be enabled or made capable to serve in or execute the office or place of lord mayor or sheriff, recorder or town clerk of the said corporation, until he or they shall respectively be approved of by the lord lieutenant, or other chief governor or governors, and privy council of this kingdom, in such manner as hath heretofore been usual.”

Under this act, at the Easter quarter assembly, held on the 16th day of April, 1790, the lord mayor and aldermen sent down the name of Mr. Alderman James to the commons, who rejected him; the lord mayor and aldermen elected seven other persons who were sent down to the commons and successively rejected; the lord mayor and aldermen then broke up their meeting without sending down the name of any other person, or conceiving that they had any right whatsoever to question the commons touching their reasons for rejecting those who had been so rejected.

The sheriffs and commons thinking that the lord mayor and aldermen had omitted to do what was required of them by the statute to do, namely, to proceed by sending down the name of another person, and so from time to time, &c. assembled and elected Mr. Alderman Howison, whom they returned for the approbation of this board. The lord mayor and aldermen returned Mr. James also as duly elected; the claims of both parties were heard by their counsel, and this board did not think proper to approve of either candidate; the city proceeded to a new election; the name of Mr. James was again sent down, and rejected as before; a message was then sent to demand of the commons the reason of their disapprobation; they declined giving any answer, but that it was their legal right to do as they had done: Mr. James was accordingly returned as duly elected by the lord mayor and aldermen; the sheriffs and commons, as before, elected and return-

ed Mr. Howison; the claims of the candidates were again debated before this honourable board, but nothing was decided.

A third assembly has since been held, in which the lord mayor and aldermen have acted as before, and returned Mr. James; the sheriffs and commons have elected Mr. Howison, who has petitioned for your approbation in virtue of that election.

I trust, my lords, you will think it now time to decide the question—my client calls for that decision; his opponents cannot wish for longer procrastination; in the progress of their pretension hitherto they have found the fears, and odium, and reprobation of the public increasing upon them.

It is full time to compose the disquietude of that public—the people do not always perceive the merits or the magnitude of a question at a single glance; but they now completely comprehend its merits and importance; they are now satisfied that every thing that can be of value to men may be lost or secured by the event of the present contest.

The claim of my clients has been impeached upon an alleged meaning of this act, and also upon certain facts stated by the learned counsel on the other side, and admitted as proved; of which facts, and the arguments upon them, I will take notice in their proper place.

As to the invective so liberally bestowed upon my fellow citizens, it best becomes the unhired, voluntary advocate of their rights to pass them without remark.* I feel them of too high respect to be protected by panegyric, or avenged by invective; I shall therefore treat those sallies of the learned gentlemen's imaginations as I would the flights of their doves, they come abroad only *animo revertendi*, and ought to be suffered to return unmolested to their owners.

* Mr. CURRAN here alludes to certain abusive passages contained in the speech of Dr. Duigenan, who appeared before the council as advocate for Alderman James and the board of aldermen.

The right of Mr. Howison is confessed by the council for his opponents, to be warranted by the letter of the law. The mayor and aldermen sent down Mr. James; he was rejected by the commons, who sent to request that another might be sent down; the board did not send down another, but demanded a reason for the rejection of Mr. James, which, by the letter of the act, they were certainly not warranted in doing. But it is said that by the sound construction of that law the commons have a right to reject only for good cause, and that having refused to assign such cause, they have been guilty of a default which has transferred the sole right of election to the lord mayor and aldermen, who having accordingly elected Mr. James.

Lord Chancellor. The question here is "can a mere right of rejection or approbation supersede a right of election?"

Mr. CURRAN. If I can satisfy this board that that is not the question, I trust I shall be heard with patience, as to what I conceive to be the question.

I say, my lords, that is not the question; because,

1st. The mode and the rights of election in this case turn not upon any general doctrine of the common law, but upon an express statute, which statute would never have been made, had it not been intended by the legislature to prescribe rules of direction different from those of the common law.

2dly. The rule alluded to relates to officers in corporations, as in the case cited, who have a naked authority to admit, but can reject only for a plain defect of right in the candidate, and who, if a mandamus is directed to him requiring him to admit, must return a legal cause of his disapprobation, that the truth of the fact, or the validity of the cause, may be duly tried.

But there is clearly no analogy between such an officer and the great body of the commons of this city.

1st. That officer has no elective authority whatsoever—it is admitted that the act gives to the commons at least a concurrent elective control, and, if the mayor and aldermen “make default,” an exclusive right to elect, which shall be “valid to all intents and purposes!”

2dly. That officer has a sort of judicial power, which is well placed in a single permanent individual, who is capable of, and responsible for, the exercise of a judicial power—but it would be monstrous to give a judicial power to a fluctuating multitude; for they cannot be presumed capable of exercising it; nor could they be responsible for such exercise by any course of law; for suppose a mandamus directed to them requiring them to approve; how is it possible to make any true return to such writ? How can any man assign a cause for that rejection which the law requires to be by ballot, and consequently secret? Or suppose a party of the commons are practised upon to return a cause, and that designedly an invalid one, how shall the residue of the commons be able to justify themselves by alleging the true and valid cause of their disapprobation?

To try it therefore by such a rule, is to try it by a rule clearly having no general analogy to the subject, nor even a possible application, except so far only as it begs the question.

My lords, it is absurd to ask how a simple power of approbation or rejection for cause, shall be controlled, unless it is first determined whether the commons have that simple power only, or whether they have, what I think they clearly have under the statute, a peremptory right of approving or rejecting without any control whatsoever.

If they have but a simple right to reject for cause, and ought to have assigned such cause under the law, they have been guilty of a default, and the sole right to elect devolves to the board of aldermen, who, of course, have duly elected. If they are not bound to assign such a reason, manifestly the aldermen have acted against law, and by their default have

lost this power, and the commons have duly elected Mr. Howison.

Now, my lords, in examining this question, you must proceed by the ordinary rule of construction applicable alike to every statute; that of expounding it by the usual acceptation and natural context of the words in which it is conceived. Do the words, then, my lords, or the natural context of this act, describe a limited power of rejecting only for cause to be assigned, or a peremptory power of rejecting without any such cause? Says the act, "If it shall happen that the commons shall reject or disapprove." The law describes this accidental rejection in language most clearly applicable to the acts of men assembled, not as judges, but as electors, not to judge by laws which they have never learned, but to indulge their affections, or their caprice; and therefore justly speaks of a rejection, not the result of judgment but of chance.

"If it shall happen that they shall *reject* or *disapprove*;" my lords, you cannot say these words are synonymous; in acts every word must have its meaning if possible; To "*reject*," contradistinguished to "*disapprove*," is to reject by an act of the will; to disapprove, supposes some act of the judgment also.

The act then clearly gives a right of rejecting, distinct from disapprobation, which by no possibility can be other than a peremptory right without limit or control.

But here, if a reason must be had, the law would naturally prescribe some mode of having it demanded. This, however, unluckily cannot be done without a direct violation of the act, which enjoins, that the two bodies shall "sit apart, and by themselves, as heretofore;" but at least it might have left the board of aldermen the means of making a silent struggle for the approbation of their favourite candidate, by sending him down again for reconsideration. But, on the contrary, the law is express, that "if the commons shall happen to reject or disapprove the first," they must then proceed to send down the name, not of *him*, but of *another*, and so on. How long, my lords? Until a good reason shall be assigned for

the rejection of the first? No, my lords, it is "until the commons shall approve of *some one person* so sent down;" and to this right of rejection, which the law has supposed might happen so often, the law has opposed the limit of a single proviso only, applicable enough to a peremptory right of rejection, but singular, indeed, if applied to rejection for cause; "Provided always, that such election into the said office of lord mayor shall be of some person from among the aldermen, and that the commons shall approve of some one person so elected and returned to them for their approbation." A rejection without cause to be assigned, being a mere popular privilege, may be limited in its extent by reasons of expediency; but a judicial power of rejecting for legal cause cannot be so controlled without the grossest absurdity. It is like a peremptory challenge, which is given to a prisoner by the indulgence of the law, and may be therefore restricted within reasonable bounds. But a challenge for cause is given of common right, and must be allowed as often as it shall be found to exist, even though the criminal should remain for ever untried, and the crime for ever unpunished.

Permit me now, my lords, to try this construction contended for by another test. Let us put it into the form of a proviso, and see how it accords with the proviso which you find actually expressed: "Provided always, that the commons shall be obliged to approve of the first person whose name shall be sent down to them, unless they shall assign good legal cause for their rejection." The proviso expressed is, "Provided that they shall approve, not of the first person, but of *some one person* so elected." Can any thing be more obvious than the inconsistency of two such provisos?

Give me leave, my lords, to compare this supposed proviso with the enacting part of the statute. It says, that if the first person sent down be rejected, the lord mayor and aldermen shall "then proceed to elect another, and send down his name," but if this supposed proviso were to make a part of the act, they would not be obliged to send down another

name," but would be authorized to insist upon the claim of the first candidate, by demanding a reason for his rejection. This supposed proviso, therefore, and of course this superinduced construction, is directly incompatible both with the body and the proviso of the statute itself.

But see further, my lords, what you do by such a construction; you declare that the benefit of this statute, which is given expressly to the commons, is given upon a tacit condition, by the breach of which that benefit is utterly forfeited. Do you think, my lords, you shall act consistently with the spirit of the constitution, or of the law of Ireland, if you declare and enforce a cause of forfeiture written in no law whatsoever, and devised only by your own interpretation? or do you not feel, my lords, to what a wretched state of servitude the subject is reduced, if criminality and forfeiture are to depend, not on the plain and permanent meaning of law, but upon the dreams and visions of capricious interpreters? If a constructive cause of forfeiture can be warranted, by which any part or any individual, of a corporation shall be adjudged to have lost their franchise; by the same principle may a constructive offence and forfeiture be devised, by which a whole corporation shall be stripped of its charter. Says the law, "If they shall omit or refuse to do what they are required to do by this act," they lose the benefit thereof: but this curious construction would declare that the commons have forfeited the benefit of the statute, by refusing to do that which they are not required by this or any other act to do.

If then, my lords, you call this power of rejection or disapprobation, a power to be regulated by technical maxims of the common law, and to be exerted only for legal cause to be assigned; what is it but to give the law a meaning which the legislature never spoke? what is it but to nullify a statute made for the benefit of the people, by an arbitrary construction, supported only by the most pitiful of all argumentative fallacies, an assumption of what cannot be proved; or to describe it in terms more suited to its demerit, that mixture

of logical poverty, and ethical meanness, which stoops to beg what it has not industry to acquire, nor craftiness to steal, nor force to extort?

But see, my lords, whether this infallible rule of the common law, upon which the whole merits of this case have been rested, will not, if admitted, be subversive of the authority which it would seem to support.

By one of the new rules, and by a clause in this act of parliament, no person can serve as mayor without the approbation of this board. This power of approving was notoriously given for the security of the government, and hath now for upwards of a century been exercised upon no other ground whatever. By a clause in this act, no person can serve as mayor without the approbation of the commons, and this right of approbation, as notoriously, was given to increase the power of the people; and the commons have accordingly so exercised it uniformly for thirty years; it is observable that this right of approbation is given to them in language more emphatical than it is to your lordships: but, for argument sake, I will suppose the words the same; now if by the common law, all rights of approving or rejecting can be founded only upon legal cause to be assigned, what becomes of your lordships' decision? You have already refused your approbation to the two present petitioners, having both exactly the same pretensions to your approbation which they have at present; you have refused your approbation, and you have assigned no cause; but let me ask a much more material question, what in that case becomes of your lordships' power? The same words in the same act of parliament cannot have two different constructions: If the commons are bound to assign a legal cause for rejection, you, my lords, must be similarly bound; and the law will then coerce the commons, and coerce your lordships, in a manner directly contrary to the intention of the act; it will then cease to be a law for the protection of liberty, on the one hand, or the security of government, on the other; for being equally

confined to a rejection for legal cause, the commons may be obliged to approve a candidate, not legally disqualified, though an enemy to their liberty, and your lordships be restrained from rejecting a candidate, not legally disqualified, though an enemy to the state. See then, my lords, to what you will be reduced: you must either admit that the statute has confined you both equally to decide upon the mere question of legal capacity or incapacity only, of which they are clearly incapable of judging, and on which it is here admitted you are incompetent to decide, and has thus elevated them, and degraded your lordships from good citizens and wise statesmen into bad judges: or if, in opposition to this construction, you do your duty to your sovereign, and refuse to admit to the magistracy a man whom you have a good reason to believe disaffected to the state, though subject to no legal incapacity; what do you do, my lords? You give two different expositions to the same words in the same act of parliament; that is, an enlarged exposition in favour of yourselves, and a confined one against the people; that is, in fact, you are driven to incur the odium of repealing the law as against the crown, and enforcing it against the subject.* See, on the other hand, my lords, how, by the plain and hitherto adopted construction, all these mischiefs are avoided. You judge of the candidate with respect to his loyalty, the commons with regard to his integrity and independence; neither of you with any relation to his legal capacity or incapacity; thus will every object of the law, of the people, and of the government, be completely obtained: the commons will enjoy their power in deciding upon the popularity of the candidate for magistracy, you will do your

* This would really be the case, supposing the act of parliament had confined the right of the privy council to disapprove, and that of the common council to reject, and the privy council claimed for itself an unqualified power of disapproving, while it denied to the common council a similar power of rejecting.

duty in deciding upon his loyalty, and the courts of justice will retain their natural exclusive jurisdiction in every question that can touch his legal qualification; thus will it be impossible for any man to have the power of the city in his hands, who is not free from all legal objections, and who is not also deserving the confidence of his sovereign as well as of his fellow subjects.

Thus far, my lords, have I examined this law, with respect to the present question, by the general rule of construction, applicable generally to all statutes; that is, of seeking for the meaning of the legislature in the ordinary and natural context of the words they have thought proper to adopt; and this I thought I might do with still more confidence in a law, professedly made for the direction of men unacquainted with legal difficulty, unversed in the subtilty of legal distinction, and acting in a situation which precludes them from the advantage of all legal assistance; but I feel that what hath been satisfactory to my mind, hath not been so to some of your lordships. I feel myself, therefore, obliged to enter upon a more minute examination of this statute, upon principles and circumstances peculiar to itself.

I am sorry, my lords, to trespass upon your patience; but I am speaking upon a subject in which, if I do not succeed, the people of this country will have lost what is of infinitely more value than any time, however precious, that may be wasted in their defence.

This act, my lords; professes to be a remedial act, and as such must be construed according to the rules peculiar to remedial laws: that is, in three points of view; first, the former state of the law; secondly, the mischief of such former state; and, thirdly, the remedy proposed for the cure of that mischief.

As to the first point; at the time of this statute the lord mayor and aldermen exercised the exclusive power of election to the chief magistracy, without any interference of the commons. The immediate mischief of such a constitution;

with respect to the metropolis itself, I have touched upon before; the people were borne down; the magistracy was depraved, the law was relaxed, and the public tranquillity was at an end. These mischiefs were more than enough to induce the citizens of Dublin to call loudly, as they did, upon the justice of the legislature for parliamentary redress. But the wisdom of that legislature formed an estimate of the mischief from considerations that probably did not enter into the minds of the contending parties; namely, from the then state of Ireland as an individual, and as a connected country; as an individual depressed in every thing essential to the support of political or civil independence; depressed in commerce, in opulence, and in knowledge; distracted by that civil and religious discord, suggested by ignorance and bigotry, and inflamed by the artifice of a cruel policy, which divided in order to destroy, conscious that liberty could be banished only by disunion, and that a generous nation could not be completely stripped of her rights, until one part of the people was deluded into the foolish and wicked idea that its freedom and consequence could be preserved or supported only by the slavery and depression of the other. In such a country it was peculiarly necessary to establish at least some few incorporated bodies, which might serve as great repositories of popular strength. Our ancestors learned from Great Britain to understand their use and their importance. In that country they had been hoarded up with the wisest forecast, and preserved with a religious reverence, as an unfailing resource against those times of storm, in which it is the will of Providence that all human affairs should sometimes fluctuate; and as such, they have been found at once a protection to the people, and a security to the crown. My lords, it is by the salutary repulsion of popular privilege that the power of the monarchy is supported in its sphere; withdraw that support and it falls in ruin upon the people, but it falls in a ruin no less fatal to itself, by which it is shivered to pieces.

Our ancestors must, therefore, have been sensible that the enslaved state of the corporation of the metropolis was a mischief that extended its effects to the remotest borders of the island. In the confederate strength, and united councils of great cities, the freedom of a country may find a safeguard which extends itself even to the remote inhabitant who never put his foot within their gates.

But, my lords, how must these considerations have been enforced by a view of Ireland, as a connected country, deprived as it was of almost all the advantages of a hereditary monarchy; the father of his people residing at a distance, and the paternal beam reflected upon his children through such a variety of *mediums*, sometimes too languidly to warm them, sometimes so intensely as to consume; a succession of governors differing from one another in their tempers, in their talents, and in their virtues, and of course in their systems of administration; unprepared in general for rule by any previous institution, and utterly unacquainted with the people they were to govern, and with the men through whose agency they were to act. Sometimes, my lords, 'tis true, a rare individual has appeared among us, as if sent by the bounty of Providence in compassion to human miseries, marked by that dignified simplicity of manly character, which is the mingled result of an enlightened understanding and an elevated integrity; commanding a respect that he laboured not to inspire; and attracting a confidence which it was impossible he could betray.* It is but eight years, my lords, since we have seen such a man amongst us, raising a degraded country from the condition of a province to the rank and consequence of a people, worthy to be the ally of a mighty empire: forming the league that bound her to Great Britain, on the firm and honourable basis of equal liberty and a common fate, "standing and falling with the British nation," and thus stipulating for that freedom which alone contains the principle of her

* The Duke of Portland, under whose administration Ireland obtained a free constitution,

political life, in the covenant of her federal connection. But how short is the continuance of those auspicious gleams of public sunshine! how soon are they passed, and perhaps for ever! In what rapid and fatal revolution has Ireland seen the talents and the virtues of such men give place to a succession of sordid parade, and empty pretension, of bloated promise, and lank performance, of austere hypocrisy and peculating economy!* Hence it is, my lords, that the administration of Ireland so often presents to the reader of her history, not the view of a legitimate government, but rather of an encampment in the country of a barbarous enemy, where the object of the invader is not government, but conquest; where he is of course obliged to resort to the corruption of clans, or of single individuals, pointed out to his notice by public abhorrence, and recommended to his confidence, only by a treachery so rank and consummate, as precludes all possibility of their return to private virtue or public reliance, and therefore only put into authority over a wretched country, condemned to the torture of all that petulant, unfeeling asperity, with which a narrow and malignant mind will bristle in unmerited elevation; condemned to be betrayed, and disgraced, and exhausted by the little traitors that have been suffered to nestle and to grow within it, making it at once the source of their grandeur, and the victim of their vice, reducing it to the melancholy necessity of supporting their consequence, and of sinking under their crimes, like the lion perishing by the poison of a reptile that finds shelter in the mane of the noble animal, while it is stinging him to death.

* The Duke of Rutland and Marquis of Buckingham quickly followed his grace. The first was marked by a love of dissipation, and undignified extravagance. The marquis, upon his arrival in Ireland, led the country to expect a general retrenchment in the public expenses. This expectation was terminated by the creation of fourteen new places for the purpose of parliamentary influence, countervailed indeed by a curtailment of the fuel allowed to the old soldiers of the royal hospital by the public bounty, and by abortive speculations upon the practicability of making one pair of boots serve for two troopers.

By such considerations as these, my lords, might the makers of this statute have estimated the danger to which the liberty of Ireland was exposed; and of course the mischief of having that metropolis enslaved, by whose independence alone those dangers might be averted. But in this estimate they had much more than theory, or the observation of foreign events to show them, that the rights of the sovereign and of the subject were equally embarked in a common fate with that independence. When in the latter part of the reign of Queen Anne, an infernal conspiracy was formed, by the then chancellor (Sir Constantine Phipps) and the privy council, to defeat that happy succession which for three generations hath shed its auspicious influence upon these realms; they commenced their diabolical project with an attack upon the corporate rights of the citizens of Dublin, by an attempt to impose a disaffected lord mayor upon them contrary to the law. Fortunately, my lords, this wicked conspiracy was defeated by the virtue of the people; I will read to your lordships the resolutions of a committee of the house of commons on the subject.

"1st. Resolved, that it is the opinion of this committee, that soon after the arrival of Sir Constantine Phipps, late lord chancellor, and one of the lords justices in this kingdom, in the year 1710, a design was formed and carried on to subvert the constitution and freedom of elections of magistrates of corporations within the new rules, in order to procure persons to be returned for members of parliament disaffected to the settlement of the crown, or his majesty and his royal issue.

"2d. Resolved, that it is the opinion of this committee, that in pursuance of that design, indirect and illegal methods were taken to subvert the ancient and legal course of electing magistrates in the city of Dublin.

"3d. Resolved, that it is the opinion of this committee, that the said Sir Constantine Phipps, and those engaged in that evil design, in less than five months, in the year 1711, procu-

red six aldermen duly elected lord mayors, and fourteen substantial citizens, duly elected sheriffs, and well known to be zealously affected to the protestant succession and members of the established church, to be disapproved, on pretence that Alderman Robert Constantine, as senior alderman, who had not been mayor, had a right to be elected lord mayor.

"4th. Resolved, that it is the opinion of this committee, that the senior alderman who had not served as mayor, had not any right by charter, usage, or by-law, in force in the city of Dublin, as such, to be elected lord mayor.

"5th. Resolved, that it is the opinion of this committee, that the said Sir Constantine Phipps, and his accomplices, being unable to support the pretended right of seniority, did, in the year 1713, set up a pretended custom or usage for the mayor, in being, to nominate three persons to be in election for lord mayor, one of whom the aldermen were obliged to choose lord mayor."

Lord Chancellor. Can you think, Mr. Curran, that these resolutions of a committee of the house of commons can have any relation whatsoever to the present subject?

MR. CURRAN. I hope, my lords, you will think they have much relation indeed to the subject before you. The weakness of the city was the mischief which occasioned the act of parliament in question; to give the city strength was the remedy. You must construe the law so as to suppress the former, and advance the latter. What topics, then, my lords, can bear so directly upon the point of your inquiry, as the perils to be apprehended from that weakness, and the advantages to be derived from that strength? What argument then can be so apposite, as that which is founded on undeniable facts? Or what authority so cogent as the opinion of the representative wisdom of the nation pronounced upon those facts, and transmitted to posterity upon record? On grounds like these, for I can conceive no other, do I suppose the rights of the city were defended in the time to which I have alluded; for it appears by the records which I have read,

that the city was then heard by her counsel; she was not denied the form of defence, though she was denied the benefit of the law. In this very chamber did the chancellor and judges sit, with all the gravity and affected attention to arguments in favour of that liberty and those rights which they had conspired to destroy. But to what end, my lords, offer arguments to such men? A little and a peevish mind may be exasperated, but how shall it be corrected by refutation? How fruitless would it have been to represent to that wretched chancellor, that he was betraying those rights which he was sworn to maintain; that he was involving a government in disgrace, and a kingdom in panic and consternation; that he was violating every sacred duty, and every solemn engagement that bound him to himself, his country, his sovereign, and his God! Alas, my lords, by what argument could any man hope to reclaim or to dissuade a mean, illiberal, and unprincipled minion of authority, induced by his profligacy to undertake, and bound by his avarice and vanity to persevere? He would probably have replied to the most unanswerable arguments, by some curt, contumelious and unmeaning apophthegm, delivered with the fretful smile of irritated self-sufficiency and disconcerted arrogance; or even if he could be dragged by his fears to a consideration of the question, by what miracle could the pigmy capacity of a stunted pedant be enlarged to a reception of the subject? The endeavour to approach it would have only removed him to a greater distance than he was before; as a little hand that strives to grasp a mighty globe is thrown back by the reaction of its own effort to comprehend. It may be given to a Hale, or a Hardwicke, to discover and retract a mistake; the errors of such men are only specks that arise for a moment upon the surface of a splendid luminary; consumed by its heat, or irradiated by its light, they soon purge and disappear; but the perversenesses of a mean and narrow intellect is like the excrescences that grow upon a body naturally cold and dark; no fire to waste them, and no ray to enlighten, they assimilate

late and coalesce with those qualities so congenial to their nature, and acquire an incorrigible permanency in the union with kindred frost and kindred opacity. Nor indeed, my lords, except where the interest of millions can be affected by the folly or the vice of an individual, need it be much regretted that to things not worthy of being made better, it hath not pleased Providence to afford the privilege of improvement.

Lord Chancellor. Surely, Mr. Curran, a gentleman of your eminence in your profession, must see that the conduct of former privy councils has nothing to do with the question before us. The question lies in the narrowest compass; it is merely whether the commons have a right of arbitrary and capricious rejection, or are obliged to assign a reasonable cause for their disapprobation. To that point you have a right to be heard, but I hope you do not mean to lecture the council.*

Mr. CURRAN. I mean, my lords, to speak to the case of my clients, and to avail myself of every topic of defence which I conceive applicable to that case. I am not speaking to a dry point of law, to a single judge, and on a mere forensic subject; I am addressing a very large auditory, consisting of coördinate members, of whom the far greater number is not versed in law. Were I to address such an audience on the interests and rights of a great city, and address them in the hackneyed style of a pleader, I should make a very idle display of profession, with very little information to those that I address, or benefit to those on whose behalf I have the honour to be heard. I am aware, my lords, that truth is to be sought only by slow and painful progress; I know also that error is in its nature flippant and compen-

* From the frequent interruptions experienced by Mr. Curran in this part of his speech, it would appear that Lord Clare perceived that the description of Sir Constantine Phipps was intended for himself. Those who best knew his lordship can judge of the justness of the representation.

dious, it hops with airy and fastidious levity over proofs and arguments, and perches upon assertion, which it calls conclusion.

Here the lord chancellor moved to have the chamber cleared. After some time the doors were opened.*

My lords, I was regretting the necessity which I am under of trespassing so much on that indulgent patience with which I feel I am so honoured. Let me not, however, my lords, be thought so vainly presumptuous as to suppose that condescension bestowed merely on me. I feel how much more you owe it to your own dignity and justice, and to a full conviction that you could not be sure of deciding with justice, if you did not hear with temper.

As to my part, my lords, I am aware that no man can convince by arguments which he cannot clearly comprehend, and make clearly intelligible to others; I consider it, therefore, not only an honour, but an advantage, to be stopped when I am not understood. So much confidence have I in the justice of my cause, that I wish any noble lord in this assembly would go with me step by step through the argument. One good effect would inevitably result: I should either have the honour of convincing the noble lord, or the public would, by my refutation, be satisfied that they are in the wrong. With this wish, and, if I may presume to say so, with this hope, I will proceed to a further examination of the subject.

It is a rule of law, that all remedial acts shall be so construed as to suppress the mischief and advance the remedy. Now a good cause of rejection can mean only a legal cause: that is, a cause working an incapacity in the person executing a corporate franchise: that is, of course, such a cause as would justify a judgment of ouster against him by a court of law, if actually in possession of such franchise; or warrant

* During the exclusion of strangers, it was understood that Lord Clare moved the council, that Mr. Curran should be restrained by their lordships authority from proceeding further in that line of argument he was then pursuing; but his lordship being overruled, Mr. Curran proceeded.

his amoval, by an act of the corporation itself. There are three sorts of offences for which a corporator may be amoved : first, such as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to exercise any public franchise; secondly, such as are *only* against his oath, and the duty of his office as a corporator, and amount to a breach of the tacit condition annexed to his franchise or office; the third sort of offence for which an officer or corporator may be displaced, is of a mixed nature, as being an offence not only against the duty of his office, but also a matter indictable at common law.

For the first species of offences, a corporation can in no case amove without a previous indiotment and conviction in a court of common law. For the other offences, it has a power of trial, as well as amotion.

To this let me add, that the office of alderman is as much a corporate office as that of lord mayor, and the legal cause that disqualifies the one must equally disqualify the other: but the person chosen to be mayor must be an alderman at the time of his election, and the law, of course, cannot suppose a man, actually in possession of a corporate franchise, to labour under any corporate or legal incapacity: does it not, then, my lords, follow irresistibly, that the law cannot intend to confine the power of rejection, which it expressly gives, to a legal incapacity, which, without the grossest absurdity, it cannot suppose to exist?

But let us assume, for argument sake, however in defiance of common sense, that the legislature did suppose it possible that such an incapacity might exist; what new privilege does a power of rejection to such cause give to the commons? And it is admitted by the learned counsel, "that this statute made a great enlargement, indeed, in their powers." Before the act was made, any corporator subject to a personal disqualification was removable by the ordinary course of law; to give the commons, therefore, only a power of preventing a

man, legally disqualified from serving a corporate office, was giving them nothing which they had not before.

What sort of construction, then, my lords, must that be which makes the legislature fall into the ridiculous absurdity of giving a most superfluous remedy for a most improbable mischief? And yet it is not in a nursery of children, nor a bedlam of madmen; but it is in an assembly the most august that this country knows of, that I am obliged to combat this perversion of sense and of law. In truth, my lords, I feel the degradation of gravely opposing a wild chimera, that could not find a moment's admission into any instructed or instituted mind; but I feel also that they who stoop to entertain it only from the necessity of exposing and subduing it, cannot at least be the first object of that degradation.

Let me, then, my lords, try this construction contended for by another test. If the act must be construed so as to say that the commons can reject only for a legal cause to be assigned, it must be so construed as to provide for all that is inseparably incident, and indispensably necessary to carrying that construction into effect; that is, it must provide a mode, in which four things may be done:

First, a mode in which such cause shall be assigned.

Secondly, a mode in which the truth of the fact of such cause shall be admitted or controverted.

Thirdly, a mode by which the truth of such fact, if controverted, shall be tried; and,

Fourthly, a mode by which the validity of such cause, when ascertained in fact, shall be judged of in law. To suppose a construction, requiring a reason to be assigned, without providing for these inevitable events, would be not the error of a lawyer, but would sink beneath the imbecility of an infant.

Then, my lords, as to the first point; how is the cause to be assigned? The law expressly precludes the parties from any means of conference, by enacting, that they shall "sit apart, and by themselves." The same law says, "that the rejection or diapprobation shall be by ballot only, and not other-

wise." Now when the law gives the commons a power of rejecting by ballot, it gives each individual a protection against the enmity which he would incur from the rejected candidate; but if you say that the rejection shall be null and void, unless fortified by the assignment of legal cause, see, my lords, what you labour to effect. Under this supposed construction, you call upon the voters who rejected by a secret vote, to relinquish that protection of secrecy which the law expressly gives them: unless, my lords, the sagacity that has broached this construction can find out some way by which the voter can justify why he voted against a particular candidate, without disclosing also that he did in fact vote against that candidate.

Let me, however, suppose that inconveniency reconciled, and follow the idea.

The name of Alderman James is sent down, and the commons certify his rejection; an ambassador is then sent to demand of the commons the cause of this rejection. They answer, "Sir, we have rejected by ballot, and they who voted against him are protected by the law from discovering how they voted;" to which the ambassador replies, "Very true, gentlemen, but you mistake their worships' question; they do not desire you to say who rejected Mr. James, for in that they well know that they could not be warranted by law; they only desire to know why a majority has voted against Mr. Alderman James." This, my lords, I must suppose to be a mode of argument not unbecoming the sagacity of aldermen, since I find it gives occasion to a serious question before so exalted an assembly as I have now the honour to address; I will, therefore, suppose it conclusive with the commons; a legal reason must be assigned for their rejection. Pray, my lords, who is to assign that legal reason? Is it the minority who voted for the rejected candidate? I should suppose not; it must be then the majority who voted for the rejection. Pray, my lords, who are they? By what means shall they be discovered.

But I will suppose that every member of the commons is willing to adopt the rejection, and to assign a cause for it. One man, suppose a friend of the rejected candidate, alleges a cause of a rejection in which he did not in reality concur, and which cause he takes care shall be invalid and absurd; as, for instance, the plumpness of the person of Mr. James; If he did not vote for the rejection, he can have no right to assign a cause for it; the question then is, did he vote for the rejection? I beg leave, my lords, to know how that is to be tried?

But suppose, to get rid of a difficulty, otherwise insurmountable, it shall be agreed in direct contradiction to common sense and justice, that every member of the commons shall be authorized to assign a legal cause of rejection, (and in truth if he may assign one, he may assign more than one if he is disposed to do so.) Suppose then, my lords, that one hundred and forty-six causes are assigned, for such may be the number, though no one member assigns more than a single cause; if they may be all assigned, they must be all disposed of according to law; but which shall be first put into a course of trial? How shall the right of precedence be decided? But I will suppose that also settled, and a single cause is assigned; that cause must be a legal disability of some of the kinds which I have already mentioned; for there cannot be any other. The cause then assigned, in order to prevail, must be true in fact, and valid in law, and amount to a legal incapacity. And here, let me observe, that a legal cause of incapacity, as it can be founded only on the commission of an infamous crime, or of some fact contrary to the duty and oath of a corporator, must, if allowed, imprint an indelible stigma on the reputation of the man so rejected. I ask, then, is the accusation of malignity, or credulity, or folly, to be taken for true? Or shall the person have an opportunity of defending himself against the charge? The cause for which he can be rejected is the same with the

cause for which he can be disfranchised ; they are equally causes working an incapacity to hold a corporate franchise ; their consequences are the same to the person accused ; loss of franchise, and loss of reputation. The person accused, therefore, if by the construction of a statute he is exposed to accusation, must, by the same construction, be entitled to every advantage in point of defence, to which a person so accused is entitled by the general law of the land. What, then, are those advantages to which a corporator is entitled, when charged with any fact as a foundation of incapacity or disfranchisement ? He must have due and timely notice of the charge, that he may prepare for his defence. Every corporator must have timely and express notice of the specific charge against him, that nothing may be done by surprise on either side. Now, my lords, you will condescend to observe, that the time supposed by this statute for the whole business of election is a single day ; is it then possible to give every member of the board of aldermen, for each of them may be a candidate, due notice of every charge of legal disability that may be possibly made against them ? Or if it be not, as it manifestly is not, will you, my lords, create a construction which exposes any subject of the land to trial without notice, and to conviction and forfeiture without that opportunity of defence to which he is entitled of natural justice and common right ?

But I will suppose that your lordships may adopt this construction, however it may supersede the right of the subject and the law of the land ; I will suppose that the candidate may be accused at a moment's warning. Is bare accusation to hold the place of conviction ? Shall the alderman, whose name is sent down, and who is rejected for an alleged personal disability, have an opportunity of defending himself against the charge of the commons ? He cannot have the privilege of the meanest felon, of standing before his accusers ; for, as an alderman, he must remain with his brethren, " separate and apart by themselves." He cannot, then,

plead for himself in person, nor by the law can he depute an attorney to defend in his name, for the commons are not authorized to admit any strangers amongst them. It is therefore utterly out of his power to deny the charge against him, however false in fact it may happen to be.

But I will suppose, if you please, that the charge is denied, and issue joined upon the fact. I beg leave to ask, if this supposed construction provides any mode of calling the jury, or summoning the witnesses, on whose testimony, and on whose verdict a citizen is to be tried upon a charge of corporate or legal culpability? But let me, my lords, with the profoundest respect, press this wicked and silly nonsense a little further. Suppose the charge admitted in fact, but the validity of it denied; who, my lords, is to judge of it by virtue of this construction? A point of law is to be decided between the lord mayor and aldermen who have chosen, and the commons who have rejected. What is the consequence? If the lord mayor and aldermen decide, they judge in their own cause; if the commons decide, they judge in their own cause, contrary to the maxim "*Nemo iudex in propria causa.*" Can you then, my lords, think yourselves warranted in adopting a construction which supposes a legal charge to be made, in which the accused has not the advantage of notice, or the means of defence; or of legal trial, and on which, if any judgment be pronounced, it must be pronounced by the parties in the cause, in direct opposition to the law of the land.

But, my lords, it seems all these defects in point of accusation, of defence, of trial, and of judgment, as the ingenious gentlemen have argued, are cured by the magical virtue of those beans, by whose agency the whole business must be conducted.

If the law had permitted a single word to be exchanged between the parties, the learned counsel confess that much difficulty might arise in the events which I have stated; but they have found out that all these difficulties are prevented

or removed by the beans and the ballot. According to these gentlemen we are to suppose one of those unshaven demagogues, whom the learned counsel have so humorously described, rising in the commons when the name of Alderman James is sent down. He begins by throwing out a torrent of seditious invective against the servile profligacy and liquorous venality of the board of aldermen. This he does by beans. Having thus previously inflamed the passions of his fellows, and somewhat exhausted his own, his judgment collects the reins that floated on the neck of his imagination, and he becomes grave, compressed, sententious, and didactic. He lays down the law of personal disability, and corporate criminality, and corporate forfeiture, with great precision, with sound emphasis and good discretion, to the great delight and edification of the assembly, and this he does by beans. He then proceeds, my lords, to state the specific charge against the unfortunate candidate for approbation, with all the artifice and malignity of accusation, scalding the culprit in tears of affected pity, bringing forward the blackness of imputed guilt through the varnish of simulated commiseration; bewailing the horror of his crime, that he may leave it without excuse; and invoking the sympathy of his judges, that he may steel them against compassion—and this, my lords, the unshaved demagogue doth by beans. The accused doth not appear in person, for he cannot leave his companions; nor by attorney, for his attorney could not be admitted—but he appears and defends by beans. At first, humble and deprecatory, he conciliates the attention of his judges to his defence, by giving them to hope that it may be without effect; he does not alarm them by any indiscreet assertion that the charge is false, but he slides upon them arguments to show it improbable; by degrees, however, he gains upon the assembly, and denies and refutes, and recriminates and retorts—all by beans—until at last he challenges his accuser to a trial, which is accordingly had, in the course

of which the depositions are taken, the facts tried, the legal doubts proposed and explained—by beans—and in the same manner the law is settled with an exactness and authority that remains a record of jurisprudence, for the information of future ages ; while at the same time the “ harmony ” of the metropolis is attuned by the marvellous temperament of jarring discord ; and the “ good will ” of the citizens is secured by the indissoluble bond of mutual crimination, and reciprocal abhorrence.

By this happy mode of decision, one hundred and forty-six causes of rejection (for of so many do the commons consist each of whom must be entitled to allege a distinct cause) are tried in the course of a single day, with satisfaction to all parties.

With what surprise and delight must the heart of the fortunate inventor have glowed when he discovered those wonderful instruments of wisdom and of eloquence, which, without being obliged to commit the precious extracts of science, or persuasion, to the faithless and fragile vehicles of words or phrases, can serve every process of composition or extraction of ideas, and every exigency of discourse or argumentation, by the resistless strength and infinite variety of beans, white or black, or boiled or raw ; displaying all the magic of their powers in the mysterious exertions of dumb investigation, and mute discussion ; of speechless objection, and tongue-tied refutation !

Nor should it be forgotten, my lords, that this notable discovery does no little honour to the sagacity of the present age, by explaining a doubt that has for so many centuries perplexed the labour of philosophic inquiry ; and furnishing the true reason why the pupils of Pythagoras were prohibited the use of beans. It cannot, I think, my lords, be doubted that the great author of the metempsychosis, found out that those mystic powers of persuasion, which vulgar naturalists supposed to remain lodged in minerals, or fossils, had really transmigrated into beans. And he could not,

therefore, but see that it would have been fruitless to preclude his disciples from mere oral babbling, unless he had also debarred them from the indulgence of vegetable loquacity.

My lords, I have hitherto endeavoured to show, and I hope not without success, that this act of parliament gives to the commons a peremptory right of rejection. That the other construction gives no remedy whatsoever for the mischief which occasioned its being passed; and cannot by any possible course of proceeding be carried into effect. I will take the liberty now of giving an answer to some objections relied upon by the counsel for Mr. James, and I will do it with a conciseness, not, I trust, disproportioned to their importance.

They say that a peremptory rejection in the commons takes away all power whatsoever from the board of aldermen. To that I answer that the fact and the principle is equally against them: the fact, because that board is the only body from which a lord mayor can be chosen, and has, therefore, the very great power that results from exclusive eligibility; the principle, because if the argument be that the lord mayor and aldermen ought to have some power in such election, by a parity of reason so ought the commons, who, if they can reject only for a legal incapacity, will be clearly ousted of all authority whatsoever in such election, and be reduced to a state of disfranchisement by such a construction.

The gentlemen say, that your lordships can only inquire into the *prima facie* title, and that the claim of Mr. James is, *prima facie*, the better claim.

I admit, my lords, you are not competent to pronounce any judgment that can bind the right. But give me leave to observe, first, that the question, upon which you yourselves have put this inquiry, is a question applicable only to the very right, and by no possibility applicable to a *prima facie* title.

One of your lordships has declared the question to be, "whether, by the common law, a mere power of approbation

or rejection can supersede a power of election?" If that question is warranted in assuming the fact, give me leave to say that the answer to it goes directly to the right, and to nothing else. For, if the commons are bound by law to assign a cause of rejection, and have not done so, Mr. James has clearly the legal right of election; and Mr. Howison has no right or title whatsoever.

But I say, further, the mode of your inquiry makes it ridiculous to argue, that you have not entered into any disquisition of the right. Why, my lords, examine witnesses on both sides? Why examine the books of the corporation? Why examine into every fact relating to the election?

I cannot suppose, my lords, that you inquired into facts upon which you thought yourselves incompetent to form any decision. I cannot suppose you to admit any extrajudicial inquiry, by which the members of a corporation may be drawn into admissions that may expose them to the future danger of prosecution or disfranchisement.

I hope, my lords, I shall not be deemed so presumptuous as to take upon me to say why you have gone into these examinations. It is not my province to justify your lordships' proceeding. It stands upon your own authority. I am only answering an argument, and I answer it by showing it inconsistent with that proceeding.

Let me, my lords, pursue the idea a little further. Are you only inquiring into a *prima facie* title? What is a *prima facie* title? I conceive it to be a title, not which may possibly be found a good one upon future examinations; but which is good and valid, and must prevail, unless it be opposed and defeated by another which may possibly be adduced, but which does not then appear. So in an ejectment at law, for instance, a plaintiff must make a title, or he is nonsuited. If he makes out a legal title *in omnibus*, the court declares it a *prima facie* title, that is, a title conclusive as to the right, unless a better shall be shown; and accordingly calls on the de-

fendant to show such better title if he can. The moment the defendant produces his title, the question of *prima facie* title is completely at an end; and the court has no longer any question to decide upon, but the very merits, and this for a plain reason. The question whether *prima facie* a good title or not, is decided upon the single ground that no other title then appears with which the title shown can be compared. In short, my lords, "whether *prima facie* good is a question confined only to the case of a single title, and cannot be applied, without the grossest absurdity, to a case where you have both the titles actually before you. It may be the question in case of a single return. In case of a double return, as here, it cannot by any possibility be the question.

But, my lords, let me carry this a little further. You have both the titles before you. You have yourselves declared that the question turns upon the construction of this act of parliament, which enacts also, "That it shall be deemed a public act, in all courts and in all places."

Now it is contended, the construction of the act is *prima facie* in favour of Mr. James.

May I presume to ask, what does the *prima facie* construction of a statute import? It must import, if it import any thing, that meaning which, for aught then appearing, is true; but may, possibly, because of something not then appearing, turn out not to be so. Now, nothing can possibly be opposed to that *prima facie* construction, save the act itself. A *prima facie* construction of a statute, therefore, can be nothing but the opinion that rises in the mind of a man, upon a single reading of it, who does not choose to be at the trouble of reading it again. In truth, my lords, I should not have thought it necessary to descend to this kind of argumentation, if it had not become necessary for me to do so, by an observation coming from one of your lordships,* "That the letter of the act would bear out the commons in their claim,

* Lord Clare.

but that the sound construction might be a very different thing." I will, therefore, add but another word upon this subject. If a *prima facie* construction be sufficient to decide, and if the commons have the letter of the law in their favour, I would ask with the profoundest humility, whether your lordships will give the sanction of your high authority to a notion, that in statutes made to secure the liberties of the people, the express words in which they are written shall not be at least a *prima facie* evidence of their signification?

My lords, the learned counsel have been pleased to make a charge against the citizens of Dublin, "for their tests and their cavalcadings" on a late occasion; and they have examined witnesses in support of their accusation. It is true, my lords, the citizens did engage to the public and to one another that they would not vote for any candidate for corporate office, or popular representation, who had any place in the police establishment: but I would be glad to know by what law it is criminal in freemen to pledge themselves to that conduct which they think indispensably necessary to the freedom of their country. The city of Dublin is bound to submit to whatever mode of defence shall be devised for her by law, while such law shall continue unrepealed; but I would be glad to learn by what law they are bound not to abhor the police institution, if it appears to them to be an institution expensive, and ineffectual, inadequate to their protection, and dangerous to their liberty; and that they do think it so cannot be doubted. Session after session has the floor of the senate been covered with their petitions, praying to be relieved against it, as an oppressive, a corrupt, and therefore an execrable establishment.

True it is also, my lords, they have been guilty of those triumphant processions, which the learned counsel have so heavily condemned. The virtue of the people stood forward to oppose an attempt to seize upon their representation, by the exercise of a dangerous and unconstitutional influence, and it succeeded in the conflict; it routed and put to flight

that corruption, which sat, like an incubus on the heart of the metropolis, chaining the current of its blood, and locking up every healthful function and energy of life. The learned counsel might have seen the city pouring out her inhabitants, as if to share the general joy of escaping from some great calamity, in mutual gratulation and public triumph.* But why does the learned counsel insist upon this subject before your lordships? Does he think such meetings illegal? He knows his profession too well not to know the reverse. But does he think it competent to the lord lieutenant and council of Ireland, to take cognisance of such facts, or to pronounce any opinion whatever concerning the privileges of the people? He must know it is not. Does he then mean that such things may be subjects of your resentment, though not of your jurisdiction? It would have been worth while, before that point had been pressed, to consider between what parties it must suppose the present contest to subsist. To call upon the government of the country to let their vengeance fall upon the people for their resistance of unconstitutional influence, is surely an appeal not very consistent with the virtuous impartiality of this august assembly. It is only for those who feel defeat, to feel resentment, or to think of vengeance.

But suppose for a moment (and there never ought to be reason to suppose it) that the opposition of the city had been directly to the views or the wishes of the government. Why are you, therefore, called upon to seize its corporate rights into your hands, or to force an illegal magistrate upon it? Is it insinuated that it can be just to punish a want of complaisance, by an act of lawless outrage and arbitrary power? Does the British constitution, my lords, know of such offen-

* The procession here alluded to, took place on the election of Mr. Grattan and Lord H. Fitzgerald, who had been returned for the city of Dublin, in opposition to the court candidates, one of whom was Alderman Warran, then at the head of the police establishment.

ces, or does it warrant this species of tyrannical reprisal? And, my lords, if the injustice of such a measure is without defence, what argument can be offered in support of its prudence or policy? It was once the calamity of England to have such an experiment made by the last of the Stuarts, and the last of that unhappy race, because of such experiments. The several corporations of that country were stripped of their charters; and what was the consequences? I need not state them; they are notorious; yet, my lords, there was a time when he was willing to relinquish what he had so weakly and wickedly undertaken; but there is a time when concession comes too late to restore either public quiet or public confidence; and when it amounts to nothing more than an acknowledgment of injustice; when the people must see that it is only the screen behind which oppression changes her attack from force to fraud, from the battery to the mine. See then, my lords, how such a measure comes recommended; its principle injustice, its motive vengeance, its adoption sanctioned by the authority of a tyrant, or the example of a revolution.

My lords, the learned counsel has made another observation, which I cannot pass without remark; it is the last with which I shall trouble you. He says, the commons may apply to the law, and bring an information in *quo warranto* against Mr. James, though you should give him your approbation; that is, my lords, your judgment does not bind the right, it only decides the possession of the office. To this I answer, that in this case to decide on the possession is, in fact, to decide the contest; and I found that answer on the high authority of the noble lord, who was pleased to say that "when the city had spent three years in the king's bench, she would probably grow sick of the contest."* I was not surprised, my lords, to hear an expression of that regret which must arise in every worthy mind, and I am sure the noble lord sincerely felt, at the distress of a people, re-

* The lord chancellor.

duced to defend those rights which ought never to have been attacked, and to defend them in a way by which they could not possibly succeed. The truth is, as the noble lord has stated, the time of Mr. James's mayoralty would expire in a year, and the question of law could not be terminated in three. The present contest, therefore, cannot be decided by law. How, then, my lords, is it to be decided? Are the people to submit tamely to oppression, or are they to struggle for their liberties? I trust, my lords, you will think they have not done any thing so culpable as can justify the driving them to so calamitous a necessity; for fatal must that struggle be, in whatsoever country it shall happen, in which the liberties of a people can find no safety but in the efforts of vindictive virtue; fatal to all parties whatever may be the event. But, my lords, I feel this to be a topic on which it is neither my province nor my wish to expatiate, and I leave it the more willingly, because I know I have already trespassed very long upon your patience, and also, because I cannot relinquish a hope that the decision of your lordships this day will be such as shall restore the tranquillity of the public mind, the mutual confidence between the government and the people, and make it unnecessary for any man to pursue so painful a subject.

SPEECH

OF MR. CURBAN IN THE CASE OF THE KING AGAINST THE
HONOURABLE MR. JUSTICE JOHNSON, IN THE COURT OF
EXCHEQUER.

DUBLIN, FEBRUARY 4, 1805.

MY LORDS,

IT has fallen to my lot, either fortunately, or unfortunately, as the event may be, to rise as counsel for my client on this most important and momentous occasion. I appear before you, my lords, in consequence of a writ issued by his *majesty*, commanding that cause be shown to this his *court* why his *subject* has been deprived of his *liberty*, and upon the cause shown in obedience to this writ, it is my duty to address you on the most awful question, if awfulness is to be judged by consequences and events, on which you have been *ever* called upon to decide. Sorry am I that the task has not been confined to more adequate powers; but, feeble as they are, they will at least not shrink from it. I move you, therefore, that Mr. Justice Johnson be released from illegal imprisonment.

I cannot but observe the sort of scenic preparation with which this sad drama is sought to be brought forward. In part I approve it; in part it excites my *disgust* and *indignation*. I am glad to find that the attorney and solicitor-generals, the natural and official prosecutors for the state, do not appear; and I infer from their absence that his excellency the lord lieutenant disclaims any personal concern in this execra-

ble transaction. I think it does him much honour; it is a conduct that equally agrees with the dignity of his character and the feelings of his heart. To his private virtues, whenever he is left to their influence, I willingly concur in giving the most unqualified tribute of respect. And I do firmly believe, it is with no small regret that he even suffers his name to be formally made use of, in avowing for a return of one of the judges of the land with as much indifference and *nonchalance* as if he were a beast of the plow. I observe, too, the dead silence into which the public is frowned by authority for the sad occasion. No man dares to mutter, no newspaper dares to whisper, that such a question is afloat. It seems an inquiry among the tombs, or rather in the shades beyond them.

Ibant aola sub nocte per umbram.

I am glad it is so—I am glad of this factitious dumbness: for if murmurs dared to become audible, my voice would be too feeble to drown them; but when all is hushed—when nature sleeps—

Cum quies mortalibus agris.

The weakest voice is heard—the shepherd's whistle shoots across the listening darkness of the interminable heath, and gives notice that the wolf is upon his walk, and the same gloom and stillness that tempt the monster to come abroad, facilitate the communication of the warning to beware. Yes, through that silence the voice shall be heard; yes, through that silence the shepherd shall be put upon his guard; yes, through that silence shall the felon savage be chased into the toil. Yes, my lords, I feel myself cheered and impressed by the composed and dignified attention with which I see you are disposed to hear me on the most important question that has ever been subjected to your consideration; the most im-

portant to the dearest rights of the human being; the most deeply interesting and animating that can beat in his heart, or burn upon his tongue—Oh! how recreating is it to feel that occasions may arise in which the soul of man may reassume her pretensions; in which she hears the voice of nature whisper to her, *os homini sublime dedit cælumque tueri*; in which even I can look up with calm security to the court, and down with the most profound contempt upon the reptile I mean to tread upon! I say reptile; because, when the proudest man in society becomes so the dupe of his childish malice as to wish to inflict on the object of his vengeance the poison of his sting, to do a reptile's work, he must shrink into a reptile's dimension; and, so shrunk, the only way to assail him is to tread upon him. But to the subject: this writ of *habeas corpus* has had a return. That return states, that Lord Ellenborough, chief justice of England, issued a warrant reciting the foundation of this dismal transaction: that one of the clerks of the crown-office had certified to him, that an indictment had been found at Westminster, charging the Hon. Robert Johnson, late of Westminster, one of the justices of his majesty's court of common pleas in Ireland, with the publication of certain slanderous libels against the government of that country; against the person of his excellency Lord Hardwicke, lord lieutenant of that country; against the person of Lord Redesdale, the chancellor of Ireland; and against the person of Mr. Justice Osborne, one of the justices of the court of king's bench in Ireland. One of the clerks of the crown-office, it seems, certified all this to his lordship. How many of those there are, or who they are, or which of them so certified, we cannot presume to guess, because the learned and noble lord is silent as to those circumstances. We are only informed that one of them made that important communication to his lordship. It puts me in mind of the information given to one of Fielding's justices: "did not," says his worship's wife, "the man with the wallet make his *fidavy* that you was a *vagram*?" I

suppose it was some such petty bag officer who gave Lord Ellenborough to understand that Mr. Justice Johnson was indicted. And being thus given to understand and be informed, he issued his warrant to a gentleman, no doubt of great respectability, a Mr. Williams, his tipstaff, to take the body of Mr. Justice Johnson and bring him before a magistrate, for the purpose of giving bail to appear within the first eight days of this term, so that there might be a trial within the sittings after; and if, by the blessing of God, he should be convicted, then to appear on the return of the *postea*, to be dealt with according to law.

Perhaps it may be a question for you to decide, whether that warrant, such as it may be, is not now absolutely spent; and, if not, how a man can contrive to be hereafter in England on a day that is past? And high as the opinion may be in England of Irish understanding, it will be something beyond even Irish exactness to bind him to appear in England not a fortnight hence, but a fortnight ago. I wish, my lords, we had the art of giving time this retrograde motion. If possessed of the secret, we might possibly be disposed to improve it from fortnights into years.

There is something not incurious in, the juxtaposition of signatures. The warrant is signed by the chief justice of all England. In music, the ear is reconciled to strong transitions of key by a preparatory resolution of the intervening discords; but here, alas! there is nothing to break the fall; the august title of Ellenborough is followed by the unadorned name of brother Bell, the sponsor of his lordship's warrant. Let me not, however, be suffered to deem lightly of the compeer of the noble and learned lord. Mr. Justice Bell ought to be a lawyer; I remember him myself long a crier,* and I know his credit with the state; he has had a *nolle prosequi*. I see not therefore why it may not fairly be said "*fortunati ambo!*" It appears by this return, that Mr. Justice

* This gentleman was formerly crier to the late Baron Hamilton, when the baron went circuit as a judge.

Bell endorses this bill of lading to another consignee, Mr. Medlicot, a most respectable gentleman; he describes himself upon the warrant, and he gives a delightful specimen of the administration of justice, and the calendar of saints in office; he describes himself a justice and a peace officer—that is, a magistrate and a catchpole: so that he may receive information as a justice; if he can write, he may draw them as a clerk; if not, he can execute the warrant as bailiff; and, if it be a capital offence, you may see the culprit, the justice, the clerk, the bailiff, and the hangman, together in the same cart; and, though he may not write, he may “ride and tie!” What a pity that their journey should not be further continued together! That, as they had been “lovely in their lives, so in their deaths they might not be divided!” I find, my lords, I have undesignedly raised a laugh; never did I less feel merriment. Let me not be condemned—let not the laugh be mistaken. Never was Mr. Hume more just than when he says, that “in many things the extremes are nearer to one another than the means.” Few are those events that are produced by vice and folly, that fire the heart with indignation, that do not also shake the sides with laughter. So when the two famous moralists of old beheld the sad spectacle of life, the one burst into laughter, the other melted into tears: they were each of them right, and equally right.

Si credas utrique

Res sunt humanae stebile ludibrium.

But these laughs are the bitter, ireful laughs of honest indignation—or they are the laughs of hectic melancholy and despair.

It is stated to you, my lords, that these two justices, if justices they are to be called, went to the house of the defendant. I am speaking to judges, but I disdain the paltry insult it would be to them, were I to appeal to any wretched

sympathy of situation. I feel I am above it. I know the bench is above it. But I know, too, that there are ranks, and degrees, and decorums to be observed; and if I had a harsh communication to make to a venerable judge, and a similar one to his crier, I should certainly address them in a very different language indeed. A judge of the land, a man not young, of infirm health, has the sanctuary of his habitation broken open by these two persons, who set out with him for the coast, to drag him from his country, to hurry him to a strange land by the "most direct way!" till the king's writ stopt the malefactors, and left the subject of the king a waif dropt in the pursuit.

Is it for nothing, my lords, I say this? Is it without intention I state the facts in this way? It is with every intention. It is the duty of the public advocate not so to put forward the object of public attention, as that the skeleton only shall appear, without flesh, or feature, or complexion. I mean every thing that ought to be meant in a court of justice. I mean not only that this execrable attempt shall be intelligible to the court as a matter of *law*, but shall be understood by the world as an act of *state*. If advocates had always the honesty and the courage, upon occasions like this, to despise all personal considerations, and to think of no consequences but what may result to the public from the faithful discharge of their sacred trust, these phrenetic projects of power, these atrocious aggressions on the liberty and happiness of men, would not be so often attempted; for though a certain class of delinquents may be screened from punishment, they cannot be protected from hatred and derision. The great tribunal of reputation will pass its inexorable sentence upon their crimes, their follies, or their incompetency; they will sink themselves under the consciousness of their situation; they will feel the operation of an acid so neutralizing the malignity of their natures, as to make them at least harmless, if it cannot make them honest. Nor is there any thing of risk in the conduct I recommend. If the fire be hot, or the

window cold, turn not your back to either; turn your face. So, if you are obliged to arraign the acts of those in high station, approach them not with malice, nor favour, nor fear. Remember, that it is the condition of guilt to tremble, and of honesty to be bold; remember that your false fear can only give them false courage:—that while you nobly avow the cause of truth, you will find her shield an impenetrable protection; and that no attack can be either hazardous or inefficient, if it be just and resolute. If Nathan had not fortified himself in the boldness and directness of his charge, he might have been hanged for the malice of his parable.

It is, my lords, in this temper of mind, befitting every advocate who is worthy of the name, deeply and modestly sensible of his duty, and proud of his privilege, equally exalted above the meanness of temporizing or of offending, most averse from the unnecessary infliction of pain upon any man or men whatsoever, that I now address you on a question, the most vitally connected with the liberty and well-being of every man within the limits of the British empire; which, if decided one way, he may be a freeman; which, if decided the other, he must be a slave. It is not the Irish nation only that is involved in this question. Every member of the three realms is equally embarked; and would to God all England could listen to what passes here this day! they would regard us with more sympathy and respect, when the proudest Briton saw that his liberty was defended in what he would call a provincial court, and by a provincial advocate. The abstract and general question for your consideration is this: my lord Ellenborough has signed with his own hand a warrant which has been endorsed by Mr. Bell, an Irish justice, for seizing the person of Mr. Justice Johnson in Ireland, for conveying his person by the most direct way, in such manner as these bailiffs may choose, across the sea, and afterwards to the city of Westminster, to take his trial for an alleged libel against the persons entrusted with the government of Ireland, and to take that trial in a country where the supposed offend-

did not live at the time of the supposed offence, nor since a period of at least eighteen months previous thereto, has ever resided ; where the subject of his accusation is perfectly unknown ; where the conduct of his prosecutors, which has been the subject of the supposed libel, is equally unknown ; where he has not the power of compelling the attendance of a single witness for his defence. Under that warrant he has been dragged from his family ; under that warrant he was on his way to the water's edge ; his transportation has been interrupted by the writ before you, and upon the return of that writ arises the question upon which you are to decide the legality or illegality of so transporting him for the purpose of trial. I am well aware, my lords, of the limits of the present discussion ; if the law was clear in favour of the prosecutors, a most momentous question might arise—how far they may be delinquents in daring to avail themselves of such a law for such a purpose ? but I am aware that such is not the present question ; I am aware that this is no court of impeachment ; and therefore that your inquiry is not whether such a power hath been criminally used, but whether it doth in fact exist. The arrest of the defendant has been justified by the advocates of the crown under the forty-fourth of his present majesty. I have had the curiosity to inquire into the history of that act, and I find that in the month of May, 1804, the brother-in-law of one of the present prosecutors obtained leave to bring in a bill to “ render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to another, and also from one county to another ;” that bill was brought in ; it travelled on in the caravan of legislation unheeded and unnoticed, retarded by no difficulties of discussion or debate, and in due fulness of season it passed into a law, which was to commence from and after the 1st of August, 1804. This act, like a young Hercules, began its exploits in the cradle. In November following the present act was issued, under its supposed authority. Let me not be understood to say that the act has

been slid through an unsuspecting legislature, under any particular influence, or for any particular purpose : that any such man could be found, or any such influence exist, or any such lethargy prevail, would not perhaps be decent to suppose ; still less do I question the legislative authority of parliament. We all know that a parliament may attain itself ; and that its omnipotence may equally extend in the same way to the whole body of the people. We also know the most unjust and cruel acts of attainder have been obtained by corrupt men in bad times ; and if I could bring myself to say, which I do not, that this act was contrived for the mere purpose of destroying an obnoxious individual, I should not hesitate to call it the most odious species of attainder that could be found upon the records of legislative degradation ; because, for the simple purpose of extinguishing an individual, it would sweep the liberty of every being in the state into the vortex of general and undistinguishing destruction. But these are points of view upon which the minds of the people of Ireland and England may dwell with terror, or indignation, or apathy, according as they may be fitted for liberty or for chains ; but they are not points for the court : and so I pass them by. The present arrest and detention are defended under the forty-fourth of the king : are they warranted by that act ? That is the only question for you to decide ; and you will arrive at that decision in the usual course, by inquiring, first, how the law stood before upon the subject ; next, what the imperfection or grievance of that law was ; and, thirdly, what the remedy intended to be applied by the act in question ?

First, then, how stood the law before ? Upon this part it would be a parade of useless learning to go farther back than the statute of Charles, the *habeas corpus* act, which is so justly called the second *magna charta* of British liberty : what was the occasion of that law ? the arbitrary transportation of the subject beyond the realm ; that base and malignant war which the odious and despicable minions of power are for ever ready

to wage against all those who are honest and bold enough to despise, to expose, and to resist them. Such is the oscillancy of man, that he lies torpid for ages under these aggressions, until at last some signal abuse, the violation of Lucretia, the death of Virginia, the oppression of William Tell, shake him from his slumber. For years had those drunken gambols of power been played in England; for years had the waters of bitterness been rising to the brim; at last a single drop caused them to overflow; the oppression of a single individual called the people of England from their sleep—and what does that great statute do? It defines and asserts the right, it points out the abuse, and it endeavours to secure the right, and to guard against the abuse, by giving redress to the sufferer, and by punishing the offender; for years had it been the practice to transport obnoxious persons out of the realm into distant parts, under the pretext of punishment, or of safe-custody. Well might they have been said to be sent “to that undiscovered country from whose bourne no traveller returns;” for of these wretched travellers how few ever did return? But of that flagrant abuse this statute has laid the axe to the root; it prohibits the abuse; it declares such detention or removal illegal; it gives an action against all persons concerned in the offence, by contriving, writing, signing, countersigning such warrant, or advising or assisting therein. That you may form a just estimate of the rights which were to be secured, examine the means by which their infringement was in future to be prevented and punished. The injured party has a civil action against the offenders; but the legislature recollected that the sneaking, unprincipled humility of a servile packed jury, might do homage to ministerial power by compensating the individual with nominal damages. The statute does that of which I remember no other instance. It leaves the jury at liberty to give damages to any extent, above five hundred pounds, but expressly forbids them to find a verdict of damages below it. Was this sufficient? No. The offenders incur a præmunire.

They are put out of the king's protection; they forfeit their lands and goods; they are disabled from bearing any office of trust or profit. Did the statute stop there? The legislature saw, in their prospective wisdom, that the profligate favourite who had committed treason against the king by the oppression of his subjects, might acquire such a dominion over the mind of his master, as by the exertion of prerogative to interrupt the course of justice, and prevent the punishment of his crime. The king cannot pardon. Are bulwarks like these ever constructed to repel the incursions of a contemptible enemy? Was it a trivial and ordinary occasion which raised this storm of indignation in the parliament of that day? Is the ocean ever lashed by the tempest to waft a feather or to drown a fly? Thus, haughtily and jealously, does this statute restrain the abuses that may be committed against the liberty of the subject by the judge, the jury or the minister. One exception, and one exception only, does it contain: It excepts from its protection, by the sixteenth section, persons who may have committed any "capital offence" in Scotland or Ireland. If the principle of that exception were now open to discussion, sure I am that much might be said against its policy. On the one side, you would have to consider the mischief of letting this statute protect a capital offender from punishment, by prohibiting his transmission to that jurisdiction where his crime was committed, and where alone he could be tried. On the other, you would have to weigh the danger to be feared from the abuse of such a power, which, as the *habeas corpus* act stood, could not be resorted to in any ordinary way; but was confined to the sole and exclusive exercise of the advisers of the prerogative. You would have to consider whether it was more likely that it would be used against the guilty or the obnoxious; whether it was more likely to be used as an instrument of justice against the bad, or a pretext of oppression against the good; and, finally, whether you might not apply to the subject the humane maxim of our law—that better it is that one hundred guilty men

should escape, than that one innocent, and, let me add, meritorious man, should suffer. But our ancestors have considered the question; they have decided; and, until we are better satisfied than I fear we can be that we have not degenerated from their virtue, it can scarcely become us to pass any light or hasty condemnation upon their wisdom. In this great statute, then, my lords, you have the line of demarcation between the prerogative and the people, as well as between the criminal law and the subject, defined with all the exactness, and guarded by every precaution that human prudence could devise. Wretched must that legislature be, whose acts you cannot trace to the first unchangeable principles of rational prerogative, of civil liberty, of equal justice! In this act you trace them all distinctly. By this act you have a solemn legislative declaration, "that it is incompatible with liberty to send any subject out of the realm, under pretence of any crime supposed or alleged to be committed in a foreign jurisdiction, except that crime be capital." Such were the bulwarks which our ancestors drew about the sacred temple of liberty—such the ramparts by which they sought to bar out the ever-toiling ocean of arbitrary power; and thought (generous credulity!) that they had barred it out from their posterity for ever; little did they foresee the future race of vermin that would work their way through those mounds, and let back the inundation; little did they foresee that their labours were so like those frail and transient works that threatened for a while the haughty crimes and battlements of Troy, but so soon vanished before the force of the trident and the impulse of the waters; or that they were still more like the forms which the infant's finger traces upon the beach; the next breeze, the next tide, erases them, and confounds them with the barren undistinguished strand. The ill-omened bird that lights upon it sees nothing to mark, to allure, or to deter, but finds all one obliterated, unvaried waste,

Et sola secum sicca spatiaturs arena.

Still do I hope that this sacred bequest of our ancestors will have a more prosperous fortune, and be preserved by a more religious and successful care, a polar star to the wisdom of the legislator, and the integrity of the judge.

As such will I suppose its principle not yet brought into disgrace; and as such with your permission will I still presume to argue upon that principle.

So stood the law till the two acts of the 23d and 24th of Geo. II. which relate wholly to cases between county and county in England. Next followed the act of the 13th of his present majesty, which was merely a regulation between England and Scotland. And next came the act of the 44th of the present reign, upon which you are now called on to decide, which, as between county and county, is an incorporation of the two acts of Geo. II. and, as between England, Scotland and Ireland, is nearly a transcript of the 13th of the king.

Under the 3d and 4th sections of this last act, the learned counsel for the learned prosecutors (for really I think it only candid to acquit the lord lieutenant of the folly or the shame of this business, and to suppose that he is as innocent of the project from his temper, as he must from his education be ignorant of the subject) endeavour to justify this proceeding. The construction of this act they broadly and expressly contend to be this: first, they assert that it extends not only to the higher crimes, but to all offences whatsoever: secondly, that it extends not only to persons who may have committed offences within any given jurisdictions, and afterwards escaped or gone out of such jurisdictions, but to all persons whether so escaping, or going out, or not: thirdly, that it extends to constructive offences, that is, to offences committed against the laws of certain jurisdictions, committed in places not within them, by persons that never put their feet within them, but by construction of law committing them within such jurisdictions, and of course triable therein: fourthly, that it extends peculiarly to the case of libels against the persons entrusted

with the powers of government or with offices in the state; and, fifthly, that it extends not only to offences committed after the commencement of the act, but also to offences at any period, however remotely, previous to the existence of the statute; that is, that it is to have an *ex post facto* operation. The learned prosecutors have been forced into the necessity of supporting these last monstrous positions, because, upon the return to the writ, and upon the affidavits, it appears, and has been expressly admitted in the argument, first, that the supposed libel upon these noble and learned prosecutors, relates to the unhappy circumstances that took place in Ireland on the twenty-third of June, 1803, and of course must have been published subsequent thereto: and, secondly, that Mr. Justice Johnson, from the beginning of 1803 to the present hour, was never for a moment in England, but was constantly resident in Ireland; so that his guilt, whatever it be, must arise from some act, of necessity, committed in Ireland, and by no physical possibility committed, or capable of being committed, in England; these are the positions upon which a learned chancellor and a learned judge come forward to support their cause, and to stake their character, each in the face of his country, and both in the face of the British empire: these are the positions, which, thank God, it belongs to my nature to abhor, and to my education to despise, and which it is this day my most prompt and melancholy duty to refute and to resist—most prompt in obeying; most grieved at the occasion that calls for such obedience.

We must now examine this act of the forty-fourth of the king, and in doing so, I trust you will seek some nobler assistance than can be found in the principles or the practice of day-rules or side-bar motions; something more worthy a liberal and learned court, acting under a religious sense of their duty to their king, their country, and their God, than the feeble and pedantic aid of a stunted verbal interpretation straining upon its tiptoe to peep over the syllable that stands between it and meaning. If your object was merely to see if its words could be tortured into a submission to a vindictive

interpretation, you would have only to endorse the construction that these learned prosecutors have put upon it, and that with as much grave deliberation as Mr. Justice Bell has vouchsafed to endorse the warrant which my Lord Ellenborough has thought fit to issue under its authority. You would then have only to look at it, *ut leguleius quidam cautus atque acutus, præcentor*.

LORD AVONMORE. No, Mr. Curran, you forget; it is not *præcentor*, it is *leguleius quidam cautus atque acutus, præactionum cantor formarum auctus syllabarum*.

MR. CURRAN. I thank you, my lord, for the assistance; and I am the more grateful, because when I consider the laudable and successful efforts that have been made of late to make science domestic and familiar, and to emancipate her from the trammels of scholarship, as well as the just suspicion under which the harbourers and abettors of those outlawed classics have fallen, I see at what a risk you have ventured to help me out. And yet see, my lord, if you are prudent in trusting yourself to the honour of an accomplice. Think, should I be prosecuted for this misprision of learning, if I could resist the temptation of escaping by turning evidence against so notorious a delinquent as you, my good lord; and so confessedly more criminal than myself, or perhaps than any other man in the empire.*

To examine this act, then, my lords, we must revert to the three English statutes of which it is a transcript. The first of these is the twenty-third of George II. cap. 26. sect. 11.

So much of the title as relates to our present inquiry is "for the apprehending of persons in any county or place upon warrants granted by justices of the peace in any other county or place."

See now sect. 11. that contains the preamble and enactment as to this subject:

* Lord Avonmore may be justly ranked among the first classical scholars in either Ireland or England. They who know him know this.

“ And whereas it frequently happens that persons, against whom warrants are granted by justices of the peace for the several counties within this kingdom, escape into other counties or places out of the jurisdiction of the justices of the peace granting such warrants, and thereby avoid being punished for the offences wherewith they are charged :” “ For remedy whereof, be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June, one thousand, seven hundred and fifty, in case any person, against whom a legal warrant shall be issued, by any justice or justices of the peace for any county, riding, division, city, liberty, town or place within this kingdom, shall escape or go into any other county, riding, division, city, liberty, town or place out of the jurisdiction of the justice or justices granting such warrant as aforesaid; it shall and may be lawful for any justice of the peace of the county, riding, division, city, liberty, town or place, to which such person shall have gone or escaped, to endorse such warrant, upon application made to him for that purpose, and to cause the person against whom the same shall have been issued to be apprehended and sent to the justice or justices who granted such warrant, or to some other justice or justices of the county, riding, division, city, liberty, town or place from whence such person shall have gone or escaped, to the end that he or she may be dealt with according to law, any law or usage to the contrary notwithstanding.”

This act was amended by the thirty-fourth of the same reign, the title of which was, “ An act for amending and making more effectual a clause in an act passed in the last session of parliament, for the apprehending of persons in any county or place upon warrants granted by justices of the peace of any other county or place.”

It then recites the 11th section of the twenty-third of George II. and proceeds, “ And whereas such offender or offenders may reside, or be in some other county, riding, division, city, liberty, town or place out of the jurisdiction of the justice or justices granting such warrant as aforesaid,

before the granting such warrant, and without escaping or going out of the county, riding, division, city, liberty, town or place after such warrant granted."

I shall reserve a more particular examination of these two acts for that head of my argument that shall necessarily require it. At present I shall only observe, first, that they are manifestly prospective: secondly, that they operate only as between county and county in England: thirdly, that they clearly and distinctly go to all offenders whatsoever who may avoid trial and punishment of their offences, by escaping from the jurisdiction in which they were committed, and were of course triable and punishable: and, fourthly, that provision is made for bailing the persons so arrested in the place where taken, if the offences charged upon them were bailable by law.

In the thirteenth of his present majesty, it was thought fit to make a law with respect to criminals escaping from England to Scotland, and *vice versa*: of that act the present statute of the forty-fourth is a transcript. And upon this statute arises the first question made by the prosecutors, namely, whether, like the acts of the twenty-third and twenty-fourth of George II. which were merely between county and county, it extended indiscriminately to the lowest as well as the highest offences? or whether the thirteenth and forty-fourth, which go to kingdom and kingdom, are not confined to some and to what particular species of offences? The preamble of these two statutes, so far as they bear upon our present question, is contained in the 3d section of the forty-fourth, the act now under consideration. And there is not a word in it that is not most material. It says, "Whereas it may frequently happen that felons and other malefactors in Ireland may make their escape into Great Britain; and also that felons and other malefactors in Great Britain may make their escape into Ireland, whereby their crimes remain unpunished." There being no sufficient provision by the laws

now in force in Great Britain and Ireland respectively for apprehending such offenders and transmitting them into that part of the united kingdom in which their offences were committed. For remedy whereof, &c. and if any person against whom a warrant shall be issued by any justice of the peace in Ireland, for any crime or offence against the laws of Ireland, shall escape, go into, reside, or be in any place in England or Scotland, it shall be lawful for any justice of the peace for the place whither or where such persons shall escape, &c. to endorse his name on such warrant; which warrant so endorsed shall be a sufficient authority to the person bringing it, to execute the same, by apprehending the person against whom it is granted, and to convey him by the most direct way into Ireland, and before a justice living near the place where he shall land, which justice shall proceed with regard to him as if he had been legally apprehended in such county of Ireland. The 4th section makes the same provision for escapes from England or Scotland into Ireland. The statute goes on and directs that the expenses of such removal shall be repaid to the person defraying the same, by the treasurer of the county in which the crime was committed, and the treasurer is to be allowed for it in his accounts.

To support the construction that takes in all possible offences of all possible degrees, you have been told, and upon the grave authority of notable cases, that the enacting part of a statute may go beyond its preamble; that it cannot be restrained by the preamble, and still less by the title; that here the enacting clause was the words "any offence," and that "any offence" must extend to every offence, and of course to the offence in question. If the question had been of a lighter kind, you might perhaps have smiled at the parade of authorities produced to establish what no lawyer ever thinks of denying. They would have acted with more advantage to the justice of the country, though perhaps not to the wishes of their clients, if they had reminded your lordships

that in the construction of statutes the preamble, and even the title itself, may give some assistance to the judge in developing its meaning and its extent; if they had reminded you that remedial laws are to be construed liberally, and penal laws with the utmost strictness and caution. And when they contend that a supposed libel is within the letter of this law, they would have done well to have added, that it is a maxim that there may be cases within the letter of a statute which, notwithstanding, the judge is bound to reject from its operation, as being incompatible with its spirit. They would have done well in adding, that the judge is bound so to construe all laws as not to infringe upon any of the known rules of religion or morality—any of the known rules of distributive justice—any of the established principles of the liberties and rights of the subject—and that it is no more than a decent and becoming deference to the legislator to assume as certain, that whatever words he may have used, he could not possibly have meant any thing that upon the face of it was palpably absurd, immoral, or unjust. These are the principles on which I am persuaded this court will always act, because I know them to be the principles on which every court of justice ought to act. And I abstain studiously from appealing to any judicial decisions in support of them, because to fortify them by precedent or authority would be to suppose them liable to be called in question. There is another rule which I can easily excuse learned gentlemen from adverting to, and that is, that when many statutes are made in *pari materia*, any one of them is to be construed not independently of the others, but with a reference to the entire code of which it is only a component part.

On these grounds, then, I say, the forty-fourth was not, and could not be intended, to go to all offences whatsoever.

First, because the acts of the twenty-third and twenty-fourth of George II. had already described "all persons" by words of the most general and comprehensive kind. If the framers

of the thirteenth and forty-fourth meant to carry these acts to the same length, they had the words of the former acts before their eyes, and yet they have used very different words: a clear proof, in my mind, that they meant to convey a very different meaning. In these latter acts they use very singular words—"felons and other malefactors;" that these words are somewhat loose and indefinite I make no difficulty of admitting; but will any man that understands English deny that they describe offences of a higher and more enormous degree? You are told that felon does not necessarily mean a capital offender, because there are felonies not capital, the name being derived from the forfeiture not of life, but of property. You are also told, that "malefactor" means generally an ill-doer, and in that sense, that every offender is a malefactor: but the thirteenth and forty-fourth states this class to be felons and malefactors, for whose transmission from kingdom to kingdom "no sufficient provision was made by the laws now in force." Now I think it is not unfair reasoning to say, that this act extends to a class of offenders whose transmission was admitted to be not incompatible with the just liberty of the subject of England; but for whose transmission the legislature could not say there was no provision; but for whose transmission it was clear that there was not a sufficient provision, though there was some provision. If you can find any class so circumstanced, that is, exclusively liable by law to be so transmitted, the meaning of the words "felons and other malefactors," becomes fixed, and must necessarily refer to such class.

Now that class is expressly described in the *habeas corpus* act, because it declares the transmission of all persons to be illegal, except only persons charged with capital crimes; for their apprehension and transmission, there was a provision, the *mandatum regis*; that is, the discretionary exercise of the prerogative. That power had theretofore been used in cases of treason, as in Lundy's case: so in the case of Lord Sanchar; Carliel, the principal in the murder of Turner,

committed in London, by the procurement of Lord Sanchar, was arrested, by the order of King James I. in Scotland, whither he had fled, and brought back to England, where he was executed for the crime, as was Lord S. the accessory before the fact; but such interference of the prerogative might be granted or withheld at pleasure, could be applied for only with great difficulty and expense, and therefore might well be called an insufficient provision. No provision for such a purpose can be sufficient, unless, instead of depending on the caprice of men in power, it can be resorted to in the ordinary course of law. You have, therefore, my lords, to elect between two constructions; one, which makes an adequate provision for carrying the exception in the sixteenth section of the *habeas corpus* act into effect; and the other, a complete and radical repeal of that sacred security for the freedom of Englishmen. But further, the spirit and the letter of the *habeas corpus* law is, that the party arrested shall, without a moment's delay, be bailed, if the offence be bailable; but if misdemeanors are within this act, then an English subject, arrested under an Irish warrant, cannot be bailed within any part of the realm of England, but must be carried forward in the custody of Irish bailiffs, to the sea shore of his country, where he is to be embarked in such vessel as they think proper; and if it should be the good pleasure of his guardians to let him land alive in any part of Ireland, then, and not till then, may he apply to an Irish justice to admit him to bail in a foreign country, where he is a perfect stranger, and where none but an idiot could expect to find any man disposed to make himself responsible for his appearance. Can you, my lords, bring your minds easily to believe that such a tissue of despotism and folly could have been the sober and deliberate intention of the legislature? But further, under the acts of George II., even from one county to the next, the warrant by the first justice must be authenticated upon oath before it can be endorsed by the second; but in this act, between, perhaps, the remo-

test regions of different kingdoms, no authentication is required; and, upon the endorsement of, perhaps, a forged warrant, which the English justice has no means of inquiring into, a British subject is to be marched through England, and carried over sea to Ireland, there to learn in the county of Kerry, or Galway, or Derry, that he had been torn from his family, his friends, his business, to the annihilation of his credit, the ruin of his affairs, the destruction of his health, in consequence of a mistake, or a practical joke, or an inhuman or remorseless project of vindictive malice; and that he is then at liberty to return, if he is able; that he may have a good action at law against the worthy and responsible bailiff that abused him, if he is foolish enough to look for him, or unfortunate enough to find him. Can you, my lords, be brought seriously to believe that such a construction would not be the foulset aspersion upon the wisdom and justice of the legislature?

I said, my lords, that an Englishman may be taken upon the endorsement of a forged warrant. Let me not be supposed such a simpleton as to think that the danger of forgery makes a shade of difference in the subject. I know too well that calender of saints, the Irish justices; I am too much in the habit of prosecuting and defending them in every term and every commission, not to be able to guess at what price a customer might have real warrants by the dozen; and, without much sagacity, we might calculate the average expense of their endorsement at the other side of the water. But, further yet the act provides that the expense of such transmission shall be paid at the end of the journey, by the place where the crime has been committed—but, who is to supply the expenses by the way? What sort of prosecutors do you think the more likely to advance those expenses, an angry minister, or a vindictive individual? I can easily see that such a construction would give a most effectual method of getting rid of a troublesome political opponent; or a rival in

trade; or a rival in love; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir; but I cannot bring myself to believe that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand, I trust in God a successful one, in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty, or of showing to these nations that their treasure and their blood were to be wasted in the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medlicots, and their trusty and well-beloved cousins and catchpoles.

But, my lords, even if the prosecutor should succeed, which, for the honour and character of Ireland, I trust he cannot, in wringing from the bench an admission that all offences whatsoever are within this act, he will have only commenced his honourable cause, he will only have arrived at the vestibule of atrocity. He has now to show that Mr. Johnson is within the description of a malefactor, making his escape into Ireland, whereby his offence may remain unpunished, and liable to be arrested under a warrant endorsed in that place whither or where such person shall escape, go into, reside or be. For this inquiry you must refer to the 23d and 24th Geo. II. The first of these, 23d, c. 11. recites the mischief, "that persons against whom warrants are granted, *escape* into other counties, and thereby avoid being punished." The enacting part then gives the remedy: "the justice for the place into which *such* person shall have gone or escaped, shall endorse the original warrant, and the person accused shall thereunder be sent to the justice who granted it, to be by him dealt with," &c.

If words can be plain, these words are so—they extend to persons actually committing crimes within a jurisdiction, and actually escaping into some other after warrant granted, and

thereby avoiding trial. In this act there were found two defects: first, it did not comprehend persons changing their abode before warrant issued, and whose removing, as not being a direct flight from pursuit, could scarcely be called an escape; secondly, it did not give the second justice a power to bail. And here you see how essential to justice it was deemed, that the person arrested should be bailed on the spot, and at the moment of arrest, if the charge was bailable.

Accordingly, the 24th of Geo. II. c. 55. was made: After reciting the former act, and the class of offenders thereby described, namely, actual offenders actually escaping, it recites that "whereas *such offenders* may reside or be in some other county before the warrant granted, and without escaping or going out of the county after such warrant granted;" it then enacts, "that the justice for such place where such person shall escape, go into, reside, or be, shall endorse, &c. and may bail, if bailable, or transmit," &c.

Now the construction of these two acts, taken together, is manifestly this:—it takes in every person who being in any jurisdiction, and committing an offence therein, escaping after warrant, or without escaping after warrant, going into some other jurisdiction, and who shall there *reside*, that is, permanently abide, or *shall be*, that is not permanently, so as to be called a resident.

Now here it is admitted, that Mr. Johnson was not within the realm of England since the beginning of 1802, more than a year before the offence existed; and therefore you are gravely called upon to say that he is a person who made his escape *from* a place where he never was, and into a place which he had never left. To let in this wise and humane construction, see what you are called upon to do—the statute makes such persons liable to arrest if they shall have done certain things, to wit, if they shall escape, go into, reside, or be; but if the fact of simply being, *i. e.* existing, in another jurisdiction, is sufficient to make them so liable, it follows of course that the two only verbs that imply doing any thing,

that is, *escape, or go into*, must be regarded as superfluous; that is, that the legislature had no idea whatsoever to be conveyed by them when they used them, and therefore are altogether expunged and rejected.

Such, my lords, are the strange and unnatural monsters that may be produced by the union of malignity and folly. I cannot but own that I feel an indignant, and, perhaps, ill-natured satisfaction, in reflecting that my own country cannot monopolize the derision and detestation that such a production must attract. It was originally conceived by the wisdom of the east—it has made its escape, and come into Ireland under the sanction of the first criminal judge of the empire: where, I trust in God, we shall have only to feel shame or anger at the insolence of the visit; without the melancholy aggravation of such an execrable guest continuing *to reside or to be among us*. On the contrary, I will not dismiss the cheering expectation from my heart, that your decision, my lords, will show the British nation, that a country having as just and as proud an idea of liberty as herself, is not an unworthy ally in the great contest for the rights of humanity; is no unworthy associate in resisting the progress of barbarity and military despotism; and in defending against its enemies that great system of British freedom, in which we have now a common interest, and under the ruins of which, if it should be overthrown, we must be buried in a common destruction.

I am not ignorant, my lords, that this extraordinary construction has received the sanction of another court, nor of the surprise and dismay with which it smote upon the general heart of the bar. I am aware that I may have the mortification of being told in another country of that unhappy decision, and I foresee in what confusion I shall hang down my head when I am told it. But I cherish, too, the consolatory hope, that I shall be able to tell them that I had an old and learned friend, whom I would put above all the sweepings of their hall, who was of a different opinion; who had derived his ideas of civil liberty from the purest fountains of Athens

and of Rome; who had fed the youthful vigour of his studious mind with the theoretic knowledge of their wisest philosophers and statesmen; and who had refined that theory into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples; by dwelling on the sweet souled piety of Cimon; on the anticipated christianity of Socrates; on the gallant and pathetic patriotism of Epaminondas; on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to have pushed the sun from his course. I would add, that if he had seemed to hesitate, it was but for a moment; that his hesitation was like the passing cloud that floats across the morning sun, and hides it from the view, and does so for a moment hide it by involving the spectator without even approaching the face of the luminary: And this soothing hope I draw from the dearest and tenderest recollections of my life, from the remembrance of those attic nights and those refections of the gods which we have spent with those admired, and respected, and beloved companions who have gone before us; over whose ashes the most precious tears of Ireland have been shed: yes, my good lord, I see you do not forget them; I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, when the innocent enjoyment of social mirth expanded into the nobler warmth of social virtue, and the horizon of the board became enlarged into the horizon of man—when the swelling heart conceived and communicated the pure and generous purpose—when my slender and younger taper imbibed its borrowed light from the more matured and redundant fountain of yours: Yes, my lord, we can remember those nights without any other regret than that they can never more return, for

“We spent them not in toys, or lust, or wine:

“But search of deep philosophy,

“Wit, eloquence and poesy,

“Arts which I lov’d, for they, my friend, were^u thine.”

* Lord Avonmore. He has certainly a strong likeness to the picture. Those who know him perceive and acknowledge it.

But, my lords, to return to a subject from which to have thus far departed, I think may not be wholly without excuse. The express object of the 44th was to send persons *from* places where they are not triable by law, back to the places that had jurisdiction to try them. And in those very words does Mr. Justice Blackstone observe on the thirteenth of the king, that it was made to prevent impunity by escape, by giving a power of "sending back" such offenders as had so escaped.

This topic of argument would now naturally claim its place in the present discussion. I mention it now, that it might not be supposed that I meant to pretermitt so important a consideration. And I only mention it, because it will connect itself with a subsequent head of this inquiry in a manner more forcibly applicable to the object, when I think I may venture to say, it will appear to demonstration, that if the offence charged upon the defendant is triable at all, it is triable in Ireland, and nowhere else; and of course that the prosecutors are acting in direct violation of the statute, when they seek to transport him from a place where he can be tried, into another country that can have no possible jurisdiction over him.

Let us now, my lords, examine the next position contended for by those learned prosecutors. Having laboured to prove that the act applies not merely to capital crimes, but to all offences whatsoever; having laboured to show that an act for preventing impunity by escape extends to cases not only where there was no escape, but where escape in fact was physically impossible; they proceed to put forward boldly a doctrine which no lawyer, I do not hesitate to say it, in Westminster-Hall would have the folly or the temerity to advance; that is, that the defendant may by construction of law be guilty of the offence in Westminster, though he should never have passed within its limits till he was sent thither to be tried: with what a fatal and inexorable uniformity do the tempers and characters of men domineer over their actions

and conduct ! How clearly must an Englishman, if by chance there be any now listening to us, discern the motives and principles that dictated the odious persecutions of 1794 re-assuming their operations ; forgetting that public spirit by which they were frustrated ; unappalled by fear, undeterred by shame, and returning again to the charge ; the same wild and impious nonsense of constructive criminality, the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity, to the sound, and plain, and guarded maxims of the criminal law of England ! the purest, the noblest, the chastest system of distributive justice that was ever venerated by the wise, or perverted by the foolish, or that the children of men in any age or climate of the world have ever yet beheld ; the same instruments, the same movements, the same artists, the same doctrines, the same doctors, the same servile and infuriated contempt of humanity, and persecution of freedom ! the same shadows of the varying hour that extend or contract their length, as the beam of a rising or a sinking sun plays upon the gnomon of self-interest ! how demonstratively does the same appetite for mice authenticate the identity of the transformed princess that had been once a cat !

But it seems as if the whole order and arrangement of the moral and physical world had been contrived for the instruction of man, and to warn him that he is not immortal. In every age, in every country, do we see the natural rise, advancement, and decline of virtue and of science. So it has been in Greece, in Rome ; so it must be, I fear, the fate of England. In science, the point of its maturity and manhood is the commencement of its old age ; the race of writers, and thinkers, and reasoners, passes away, and gives place to a succession of men that can neither write, nor think, nor reason. The Hales, the Holts, and the Somers shed a transient light upon mankind, but are soon extinct and disappear, and give place to a superficial and overweening generation of laborious and strenuous idlers—of silly scholiasts, of wrangling

mooters, of prowsing garrulists, who explore their darkling ascent upon the steps of science, by the balustrade of cases and manuscripts, who calculate their depth by their darkness, and fancy they are profound because they feel they are perplexed. When the race of the Palladios is extinct, you may expect to see a clumsy hodman collected beneath the shade of his shoulders, affecting to fling a builder's glance upon the temple, on the proportion of its pillars; and to pass a critic's judgment on the doctrine that should be preached within them.

Let it not, my lords, be considered amiss that I take this up rather as an English than an Irish question. It is not merely because we have no *habeas corpus* law in existence; (the antiquarian may read of it though we do not enjoy it;) it is not merely because my mind refuses itself to the delusion of imaginary freedom, and shrinks from the meanness of affecting an indignant haughtiness of spirit that belongs not to our condition, that I am disposed to argue it as an English question; but it is because I am aware that we have now a community of interest and of destiny that we never had before—because I am aware that blended as we now are, the liberty of man must fall where it is highest, or rise where it is lowest, till it finds its common level in the common empire—and because, also, I wish that Englishmen may see that we are conscious that nothing but mutual benevolence and sympathy can support the common interest that should bind us against the external or the intestine foe; and that we are willing, whenever that common interest is attacked, to make an honest and animated resistance, as in a common cause, and with as cordial and tender an anxiety for their safety as for our own.

Let me now, briefly, because no subject can be shorter or plainer, consider the principle of local jurisdictions, and constructive crimes.

A man is bound to obedience, and punishable for disobedience, of laws: first, because, by living within their jurisdic-

tion he avails himself of their protection ; and this is no more than the reciprocity of protection and allegiance on a narrower scale ; and, secondly, because by so living within their jurisdiction he has the means of knowing them, and cannot be excused because of his ignorance of them. I should be glad to know, upon the authority of what manuscript, of what pocket-case, the soundness of these principles can be disputed ? I should be glad to know upon what known principle of English law a Chinese, or a Laplander, can be kidnapped into England, and arraigned for a crime which he committed under the pole, to the injury of a country which he had never seen—is violation of a law which he had never known, and to which he could not owe obedience—and, perhaps, for an act, the non-performance of which might have forfeited his liberty or his life, to the laws of that country which he was bound to know, and was bound to obey ? Very differently did our ancestors think of this subject : They thought it essential to justice, that the jurisdiction of criminal law should be local and defined—that no man should be triable but there, where he was accused of having actually committed the offence ; where the character of the prosecutor, where his own character was known, as well as the characters of the witnesses produced against him ; and where he had the authority of legal process to enforce the attendance of witnesses for his defence. They were too simple to know any thing of the equity of criminal law. Poor Bracton or Fleta would have stared if you had asked them, “ What, gentlemen, do you mean to say that such a crime as this shall escape from punishment ? ” Their answer would have been, no doubt, very simple and very foolish ; they would have said, “ We know there are many actions that we think bad actions, which yet are not punishable, because not triable, by law ; and that are not triable, because of the local limits of criminal jurisdictions.” And, my lords, to show with what a religious scrupulosity the locality of jurisdictions was observed, you have an instance in the most odious of all offences, treason only

excepted—I mean the crime of wilful murder. By the common law, if a man in one county procured a murder to be committed, which was afterwards actually committed in another, such procurer could not be tried in either jurisdiction, because the crime was not completed in either. This defect was remedied by the act of Edward VI. which made the author of the crime amenable to justice: but in what jurisdiction did it make him amenable? was it there where the murder was actually perpetrated? by no means; but there only where he had been guilty of the procurement, and where alone his accessorial offence was completed. And here you have the authority of parliament for this abstract position, that where a man living in one jurisdiction does an act, in consequence of which a crime is committed within another jurisdiction, he is by law triable only where his own personal act of procurement was committed, and not there where the procured or projected crime actually took effect. In answer to these known authorities of common law, has any statute, has a single decision or even dictum of a court, been adduced? Or, in an age when the pastry-cooks and snuff-shops have been defrauded of their natural right to these compositions that may be useful without being read, has even a single manuscript been offered to show the researches of these learned prosecutors, or to support their cause? No, my lords, there has not.

I said, my lords, that this was a fruit from the same tree that produced the stupid and wicked prosecutions of 1794; let me not be supposed to say it is a mere repetition of that attempt, without any additional aggravation. In 1794 the design, and odious enough it was, was confined to the doctrine of constructive guilt; but it did not venture upon the atrocious outrage of a substituted jurisdiction: the Englishman was tried on English ground, where he was known, where he could procure his witnesses, where he had lived, and where he was accused of the crime, whether actual or constructive; but the locality of the trial defeated the infernal malice of

those prosecutions. The speeches of half the natural day, where every juryman had his hour, were the knell of sleep, but they were not the knell of death. The project was exposed, and the destined victims were saved. A piece so damned could not safely be produced again on the same stage. It was thought wise, therefore, to let some little time pass, and then to let its author produce it on some distant provincial theatre for his own benefit, and at his own expense and hazard. To drag an English judge from his bench, or an English member of parliament from the separte, and in the open day, in the city of London, to strap him to the roof of a mail-coach, or pack him up in a wagon, or hand him over to an Irish bailiff, with a rope tied about his leg, to be goaded forward like an ox, on his way to Ireland, to be there tried for a constructive misdemeanor, would be an experiment, perhaps, not very safe to be attempted. These Merlins, therefore, thought it prudent to change the scene of their sorcery ;

modo Romæ, modo ponit Athenis!

The people of England might, perhaps, enter into the feelings of such an exhibition with an officiousness of sympathy, not altogether for the benefit of the contrivers—

Nec natos coram populo Medea trucidet—

and it was thought wise to try the second production before spectators whose necks were pliant, and whose hearts were broken ; where every man who dared to refuse his worship to the golden calf, would have the furnace before his eyes, and think that it was at once useless and dangerous to speak, and discreet at least, if it was not honest, to be silent. I cannot deny that it was prudent to try an experiment, that, if successful, must reduce an Englishman to a state of slavery more abject and forlorn than that of the helots of Sparta, or

the negroes of your plantations—for see, my lords, the extent of the construction now broadly and directly contended for at your bar: The king's peace in Ireland, it seems, is distinct from his peace in England, and both are distinct from his peace in Scotland; and, of course, the same act may be a crime against each distinct peace, and severally and successively punishable in each country—so much more inveterate is the criminality of a constructive than of an actual offence. So that the same man for the same act against laws that he never heard of, may be punished in Ireland, be then sent to England by virtue of the warrant of Mr. Justice Bell, endorsed by my Lord Ellenborough, and, after having his health, his hopes, and his property destroyed for his constructive offences against his majesty's peace in Ireland, and his majesty's peace in England, he may find that his majesty's peace in the Orkneys has, after all, a vested remainder in his carcass; and, if it be the case of a libel, for the full time and term of fourteen years from the day of his conviction before the Scottish jurisdiction, to be fully completed and determined. Is there, my lords, can there be, a man who hears me, that does not feel that such a construction of such a law would put every individual in society under the despotical dominion, would reduce him to be the despicable chattel, of those most likely to abuse their power, the profligate of the higher, and the abandoned of the lower orders; to the remorseless malice of a vindictive minister, to the servile instrumentality of a trading justice? Can any man who hears me conceive any possible case of abduction, of rape, or of murder, that may not be perpetrated, under the construction now shamelessly put forward? Let us suppose a case: By this construction a person in England, by procuring a misdemeanor to be committed in Ireland, is constructively guilty in Ireland, and, of course, triable in Ireland—let us suppose that Mr. Justice Bell receives, or says he receives, information that the lady of an English nobleman wrote a

letter to an Irish chambermaid, counselling her to steal a row of pins from an Irish pedlar, and that the said row of pins was, in consequence of such advice and counsel, actually stolen, against the Irish peace of our lord the king; suppose my Lord Ellenborough, knowing the signature, and reverencing the virtue of his tried and valued colleague, endorses this warrant; is it not clear as the sun that this English lady may, in the dead of night, be taken out of her bed, and surrendered to the mercy of two or three Irish bailiffs, if the captain that employed them should happen to be engaged in any cotemporary adventure nearer to his heart, without the possibility of any legal authority interposing to save her, to be matronized in a journey by land, and a voyage by sea, by such modest and respectable guardians, to be dealt with during the journey as her companions might think proper—and to be dealt with after by the worshipful correspondent of the noble and learned lord, Mr. Justice Bell, according to law? I can, without much difficulty, my lords, imagine, that after a year or two had been spent in accounts current, in drawing and redrawing for human flesh between our worthy Bells and Medlicots on this side of the water, and their noble or ignoble correspondents on the other, that they might meet to settle their accounts, and adjust their balances. I can conceive that the items might not be wholly destitute of curiosity: Brother B. I take credit for the body of an English patriot. Brother E. I set off against it that of an Irish judge. Brother B. I charge you in account with three English bishops. Brother E. I set off Mrs. McLean and two of her chickens, petticoat against petticoat. Brother B. I have sent you the body of a most intractable disturber, a fellow that has had the impudence to give a threshing to Bonaparte himself; I have sent you Sir Sidney. Dearest brother E. But I see my learned opponents smile—I see their meaning. I may be told that I am putting imaginary and ludicrous, but not probable, and, therefore, not supposable, cases. But I answer, that reasoning would be worthy

only of a slave, and disgraceful to a freeman. I answer, that the condition and essence of rational freedom is, not that the subject probably will not be abused, but that no man in the state shall be clothed with any discretionary power, under the colour and pretext of which he can dare to abuse him. As to probability, I answer, that in the mind of man there is no more instigating temptation to the most remorseless oppression, than the rancour and malice of irritated pride and wounded vanity. To the argument of improbability I answer, the very fact, the very question in debate, nor to such answer can I see the possibility of any reply, save that the prosecutors are so heartily sick of the point of view into which they have put themselves by their prosecution, that they are not likely again to make a similar experiment. But when I see any man fearless of power, because it possibly, or probably, may not be exercised upon him, I am astonished at his fortitude; I am astonished at the tranquil courage of any man who can quietly see that a loaded cannon is brought to bear upon him, and that a fool is sitting at its touch-hole with a lighted match in his hand. And yet, my lords, upon a little reflection, what is it, after what we have seen, that should surprise us, however it may shock us? What have the last ten years of the world been employed in, but in destroying the land-marks of rights, and duties, and obligations; in substituting sounds in the place of sense; in substituting a vile and canting methodism in the place of social duty and practical honour; in suffering virtue to evaporate into phrase, and morality into hypocrisy and affectation? We talk of the violations of Hamburg or of Baden; we talk of the despotical and remorseless barbarian who tramples on the common privileges of the human being; who, in defiance of the most known and sacred rights, issues the brutal mandate of usurped authority; who brings his victim by force within the limits of a jurisdiction to which he never owed obedience, and there butchers him for a constructive offence. Does it not seem as if it was a contest whether we should be more scurrilous in invective, or more atrocious in imitation?

Into what a condition must we be sinking, when we have the front to select as the subjects of our obloquy, those very crimes which we have flung behind us in the race of profligate rivalry!

My lords, the learned counsel for the prosecutors have asserted, that this act of the forty-fourth of the king extends to all offences, no matter how long or previously to it they may have been committed. The words are, "That from and after the first of August, 1804, if any person, &c. shall escape," &c. Now, certainly, nothing could be more convenient for the purpose of the prosecutors than to dismiss, as they have done, the words "escape and go into," altogether. If those words could have been saved from the ostracism of the prosecutors, they must have designated some act of the offenders, upon the happening or doing of which the operation of the statute might commence; but the temporary bar of these words they waive by the equity of their own construction, and thereby make it a retrospective law; and having so construed it a manifestly *ex post facto* law, they tell you it is no such thing, because it creates no new offence, and only makes the offender amenable who was not so before. That law professes to take effect only from and after the first of August, 1804:—Now, for eighteen months before that day it is clear that Mr. Johnson could not be removed by any power existing, from his country and his dwelling; but the moment the act took effect, it is made to operate upon an alleged offence, committed, if at all, confessedly eighteen months before. But another word as to the assertion that it is not *ex post facto*, because it creates no new crime, but only makes the party amenable. The force of that argument is precisely this:—If this act inflicted deportation on the defendant by way of punishment after his guilt had been established by conviction, that would, no doubt, be tyrannical, because *ex post facto*; but here he suffers the deportation, while the law is bound to suppose him perfectly innocent; and that only by way of process to make him amenable not by way of punishment: and surely he cannot be so unreason-

able as not to feel the force of the distinction. How naturally, too, we find, similar outrages resort to similar justifications! Such exactly was the defence of the forcible entry into Baden. Had that been a brutal violence committed in perpetration of the murder of the unfortunate victim, perhaps very scrupulous moralists might find something in it to disapprove; but his imperial majesty was too delicately tender of the rights of individuals and of nations, to do any act so flagrant as that would be, if done in that point of view; but his imperial majesty only introduced a clause of *ne omittas* into his warrant, whereby the worshipful Bells and Medicots that executed it, were authorized to disregard any supposed, fantastical privilege of nations that gave sanctuary to traitors; and he did that from the purest motives; from as disinterested a love of justice as that of the present prosecutors, and not at all in the way of an *ex post facto* law, but merely as process to bring him in, and made him amenable to the competent and unquestionable jurisdiction of the *bois de Boulogne*. Such are the wretched sophistries to which men are obliged to have recourse, when their passions have led them to do what no thinking man can regard without horror, what they themselves cannot look at without shame; and for which no legitimate reasoning can suggest either justification or excuse. Such are the principles of criminal justice, on which the first experiment is made in Ireland; but I venture to pledge myself to my fellow subjects of Great Britain, that, if the experiment succeeds, they shall soon have the full benefit of that success. I venture to promise them, they shall soon have their full measure of this salutary system for making men "amenable," heaped and running over into their bosoms.

There now remains, my lords, one, and only one, topic of this odious subject to call for observation. The offence here appears by the return and the affidavits, to be a libel upon the Irish government, published by construction in Westminster. Of the constructive commission of a crime in one place by an

agent, who, perhaps, at the moment of the act, is in another hemisphere, you have already heard enough: Here, therefore, we will consider it simply as an alleged libel upon the Irish government; and whether, as such, it is a charge coming within the meaning of the statute, and for which a common justice of peace in one kingdom is empowered to grant a warrant for conveying the person accused for trial into the other. Your lordships will observe, that in the whole catalogue of crimes for which a justice of peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In treason, the overt act; in felony, whether capital or not, the act; in misdemeanors, the simple act. The dullest justice can understand what is a breach of the peace, and can describe it in his warrant. It is no more than the description of a fact which the informer has seen and sworn to. But no libel comes within such a class; for it is decided over and over that a libel is no breach of the peace, and upon that ground it was that Mr. Wilkes, in 1763, was allowed the privilege of parliament, which privilege does not extend to any breach of the peace.

See then, my lords, what a task is imposed upon a justice of the peace, if he is to grant such a warrant upon such a charge; he no doubt may easily comprehend the allegation of the informer as to the fact of writing the supposed libel; in deciding whether the facts sworn amounted to a publication or not, I should have great apprehension of his fallibility; but if he got over those difficulties I should much fear for his competency to decide what given facts would amount to a constructive publication. But even if he did solve that question, a point on which, if I were a justice, I should acknowledge myself most profoundly ignorant, he would then have to proceed to a labour in which I believe no man could expect him to succeed: that is, how far the paper sworn to was, in point of legal construction, libellous or not. I trust this court will never be prevailed upon to sanction, by its decision,

a construction that would give to such a set of men power so incompatible with every privilege of liberty, or of law. To say it would give an irresistible power of destroying the liberty of the press in Ireland would, I am aware, be but a silly argument where such a thing has long ceased to exist. But I have for that very reason a double interest now, as a subject of the empire, in that noble guardian of liberty in the sister nation. When my own lamp is broken, I have a double interest in the preservation of my neighbour's. But if every man in England who dares to observe, no matter how honestly and justly, upon the conduct of Irish ministers, is liable to be torn from his family, and dragged hither by an Irish bailiff, for a constructive libel against the Irish government, and upon the authority of an Irish warrant; no man can be such a fool as not to see the consequence. The inevitable consequence is this; that at this awful crisis, when the weal, not of this empire only, but of the whole civilized world, depends on the steady faith and the consolidated efforts of these two countries—when Ireland is become the right arm of England—when every thing that draws the common interest and affection closer, gives the hope of life—when every thing that has even a tendency to relax that sentiment is a symptom of death, even at such a crisis may the rashness or folly of those entrusted with its management so act as to destroy its internal prosperity and repose, and lead it into the twofold, fatal error, of mistaking its natural enemies for its friends, and its natural friends for its natural enemies; without any man being found so romantically daring as to give notice of the approaching destruction.

My lords, I suppose the learned counsel will do here what they have done in the other court; they will assert that this libel is not triable here; and they will argue that so false and heinous a production, surely ought to be triable somewhere. As to the first position, I say the law is directly against them. From a very early stage of the discussion, the gentlemen for the prosecution thought it wise for their

clients to take a range into the facts much more at large than they appeared on the return to the writ, or even were by the affidavits that have been made; and they have done this to take the opportunity of aggravating the guilt of the defendant, and at the same time of panegyrising their clients; they have therefore not argued upon the libel generally as a libel, but they thought it prudent to appear perfectly acquainted with the charges which it contains: they have therefore assumed that it relates to the transactions of the twenty-third of July, 1803, and that the guilt of the defendant was, that he wrote that libel in Ireland, which was afterwards published in England; not by himself, but by some other persons. Now, on these facts, nothing can be clearer than that he is triable here. If it be a libel, and if he wrote it here, and it was published in England, most manifestly there must have been a precedent publication, not merely by construction of law in Ireland, but a publication by actual fact; and for this plain reason, if you for a moment suppose the libel in his possession, (and if he did in fact write it, I can scarcely conceive that it was not, unless he wrote it perhaps by construction,) there was no physical means of transmitting it to England that would not amount to a publication here; because, if he put it into the post-office, or gave it to a messenger to carry thither, that would be complete evidence of publication against him: so would the mere possession of the paper, in the hands of the witness who appeared and produced it, be perfect evidence, if not accounted for or contradicted; to charge him with the publication; so that really I am surprised how gentlemen could be betrayed into positions so utterly without foundation. They would have done just as usefully for their clients, if they had admitted what every man knows to be the fact, that is, that they durst not bring the charge before an Irish jury. The facts of that period were too well understood. The Irish public might have looked at such a prosecution with the most incredulous detestation;

and if they had been so indiscreet as to run the risk of coming before an Irish jury, instead of refuting the charges against them as a calumny, they would have exposed themselves to the peril of establishing the accusation, and of raising the character of the man whom they had the heart to destroy, because he had dared to censure them. Let not the learned gentlemen, I pray, suppose me so ungracious as to say that this publication, which has given so much pain to their clients, is actually true; I cannot personally know it to be so, nor do I say so, nor is this the place or the occasion to say that it is so. I mean only to speak positively to the question before you, which is matter of law. But as the gentlemen themselves thought it meet to pronounce a eulogy on their clients, I thought it rather unseemly not to show that I attended to them; I have most respectfully done so; I do not contradict any praise of their virtues or their wisdom, and I only wish to add my very humble commendation of their prudence and discretion in not bringing the trial of the present libel before a jury of this country.

The learned counsel have not been contented with abusing this libel as a production perfectly known to them; but they have wandered into the regions of fancy. No doubt the other judges, to whom those pathetic flights of forensic sensibility were addressed, must have been strongly affected by them. The learned gentlemen have supposed a variety of possible cases. They have supposed cases of the foulest calumniators aspersing the most virtuous ministers. Whether such supposed cases have been suggested by fancy, or by fact, it is not for me to decide; but I beg leave to say that it is as allowable to us as to them to put cases of supposition—

— *Cur ego si fingere pauca
Possum, invidcar.*

Let me then, my lords, put an imaginary case of a different
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kind : let me suppose that a great personage, entrusted with the safety of the citadel, (meaning and wishing perhaps well, but misled by those lackered vermin that swarm in every great hall,) leaves it so loosely guarded, that nothing but the gracious interposition of Providence has saved it from the enemy. Let me suppose another great personage going out of his natural department, and, under the supposed authority of high station, disseminating such doctrines as tend to root up the foundation of society—to destroy all confidence between man and man—and to impress the great body of the people with a delusive and desperate opinion, that their religion could dissolve or condemn the sacred obligations that bind them to their country—that their rulers have no reliance upon their faith, and are resolved to shut the gates of mercy against them.

Suppose a good and virtuous man saw that such doctrines must necessarily torture the nation into such madness and despair, as to render them unfit for any system of mild or moderate government; that, if on one side, bigotry or folly shall inject their veins with fire, such a fever must be kindled as can be allayed only by keeping a stream of blood perpetually running from the other, and that the horrors of martial law must become the direful and inevitable consequence. In such a case, let me ask what would be his indispensable duty? It would be, to avert such dreadful dangers, by exposing the conduct of such persons; by holding up the folly of such bigoted and blind enthusiasm to condign derision and contempt; and painfully would he feel that on such an occasion he must dismiss all forms and ceremonies; and that to do his duty with effect, he must do it without mercy. He should also foresee that a person so acting, when he returned to those to whom he was responsible, would endeavour to justify himself by defaming the country which he had abused—for calumny is the natural defence of the oppressor: he should, therefore, so reduce his personal credit to its just standard, that his assertions might find no more belief than

they deserved. Were such a person to be looked on as a mere private individual, charity and good nature might suggest not a little in his excuse. An inexperienced man, new to the world, and in the honeymoon of preferment, would run no small risk of having his head turned in Ireland. The people of our island are by nature penetrating, sagacious, artful, and comic—" *natio comæda est.*" In no country under heaven would an ass be more likely to be hoodwinked, by having his ears drawn over his eyes, and to acquire that fantastical alacrity that makes dulness disposable to the purposes of humorous malice, or interested imposture. In Ireland, a new great man could get the freedom of a science as easily as of a corporation, and become a doctor, by construction, of the whole Encyclopædia; and great allowance might be made under such circumstances for indiscretions and mistakes, as long as they related only to himself; but the moment they become public mischiefs, they lose all pretensions to excuse—the very ambition of incapacity is a crime not to be forgiven; and however painful it may be to inflict, it must be remembered that mercy to the delinquent would be treason to the public.

I can the more easily understand the painfulness of the conflict between charity and duty, because at this moment I am labouring under it myself; and I feel it the more acutely, because I am confident, that the paroxysms of passion that have produced these public discussions have been bitterly repented of. I think, also, that I should not act fairly if I did not acquit my learned opponents of all share whatsoever in this prosecution—they have too much good sense to have advised it; on the contrary, I can easily suppose Mr. Attorney-General sent for to give counsel and comfort to his patient; and after hearing no very concise detail of his griefs, his resentments, and his misgivings, methinks I hear the answer that he gives, after a pause of sympathy and reflection: "No, Sir, don't proceed in such a business; you will only expose yourself to scorn in one country, and to detestation in

the other. You know you durst not try him here, where the whole kingdom would be his witness. If you should attempt to try him there, where he can have no witnesses, you will have both countries upon your back. An English jury would never find him guilty. You will only confirm the charge against yourself: and be the victim of impotent, abortive malice. If you should have any ulterior project against him, you will defeat that also; for those that might otherwise concur in the design will be shocked and ashamed of the violence and folly of such a tyrannical proceeding, and will make a merit of protecting him, and of leaving you in the lurch. What you say of your own feelings I can easily conceive. You think you have been much exposed by those letters; but then remember, my dear sir, that a man may claim the privilege of being made ridiculous or hateful by no publications but his own. Vindictive critics have their rights as well as bad authors. The thing is bad enough at best; but, if you go on, you will make it worse—it will be considered an attempt to degrade the Irish bench and the Irish bar—you are not aware what a nest of hornets you are disturbing. One inevitable consequence you don't foresee—you will certainly create the very thing in Ireland, that you are so afraid of, a newspaper; think of that, and keep yourself quiet. And in the mean time, console yourself with reflecting, that no man is laughed at for a long time; every day will probably produce some new ridicule that must supersede him." Such, I am satisfied, was the counsel given; but I have no apprehension for my client, because it was not taken. Even if it should be his fate to be surrendered to his keepers—to be torn from his family—to have his obsequies performed by torch-light—to be carried to a foreign land, and to a strange tribunal where no witness can attest his innocence, where no voice that he ever heard can be raised in his defence, where he must stand mute, not of his own malice, but the malice of his enemies—yes, even so, I see nothing for him to fear—that all-gracious Being that shields the feeble from the op-

pressor, will fill his heart with hope, and confidence, and courage: his sufferings will be his armour, and his weakness will be his strength; he will find himself in the hands of a brave, a just, and a generous nation—he will find that the bright examples of her Russels and her Sydneys have not been lost to her children; they will behold him with sympathy and respect, and his persecutors with shame and abhorrence; they will feel, too, that what is then his situation, may to-morrow be their own—but their first tear will be shed for him, and the second only for themselves—their hearts will melt in his acquittal; they will convey him kindly and fondly to their shore; and he will return in triumph to his country; to the threshold of his sacred home, and to the weeping welcome of his delighted family; he will find that the darkness of a dreary and a lingering night hath at length passed away, and that joy cometh in the morning. No, my lords, I have no fear for the ultimate safety of my client. Even in these very acts of brutal violence that have been committed against him, do I hail the flattering hope of final advantage to him—and not only of final advantage to him, but of better days and more prosperous fortune for this afflicted country—that country of which I have so often abandoned all hope, and which I have been so often determined to quit for ever.

*Sæpe vale dicto multa sum deinde locutus,
Et quasi discedens oscula summa dabam,
Indulgens animo, pes tardus erat.*

But I am reclaimed from that infidel despair—I am satisfied that while a man is suffered to live, it is an intimation from Providence that he has some duty to discharge which it is mean and criminal to decline; had I been guilty of that ignominious flight, and gone to pine in the obscurity of some distant retreat, even in that grave I should have been haunted by those passions by which my life had been agitated—

Quæ cura vivos eadem sequitur tellure repositos.

And, if the transactions of this day had reached me, I feel how my heart would have been agonized by the shame of the desertion; nor would my sufferings have been mitigated by a sense of the feebleness of that aid, or the smallness of that service, which I could render or withdraw. They would have been aggravated by the consciousness that, however feeble or worthless they were, I should not have dared to thieve them from my country. I have repented—I have staid—and I am at once rebuked and rewarded by the happier hopes that I now entertain. In the anxious sympathy of the public—in the anxious sympathy of my learned brethren, do I catch the happy presage of a brighter fate for Ireland. They see that within these sacred walls, the cause of liberty and of man may be pleaded with boldness, and heard with favour. I am satisfied they will never forget the great trust, of which they alone are now the remaining depositaries. While they continue to cultivate a sound and literate philosophy—a mild and tolerating christianity—and to make both the sources of a just and liberal, and constitutional jurisprudence, I see every thing for us to hope; into their hands, therefore, with the most affectionate confidence in their virtue, do I commit these precious hopes. Even I may live long enough yet to see the approaching completion, if not the perfect accomplishment, of them. Pleased shall I then resign the scene to fitter actors—pleased shall I lay down my wearied head to rest, and say, “Lord, now lettest thou thy servant depart in peace, according to thy word, for mine eyes have seen thy salvation.”

SPEECH

**OF MR. CURRAN IN DEFENCE OF LADY PAMELA FITZGERALD,
AND HER INFANT CHILDREN, AT THE BAR OF THE HOUSE
OF COMMONS IN IRELAND.**

LORD EDWARD FITZGERALD having died in prison, before trial, of the wound he received in resisting the person who apprehended him ; a bill was brought into parliament to attain him after his death. Mr. Curran was heard at the bar of the house of commons, against the bill, as counsel for the widow and infant children of that nobleman, (the eldest of whom was only four years old,) on which occasion Mr. Curran delivered the following speech.

Mr. CURRAN said, he rose in support of a petition presented on behalf of Lord Henry Fitzgerald, brother of the deceased Lord Edward Fitzgerald, of Pamela his widow, Edward his only son and heir, an infant of the age of four years, Pamela his eldest daughter, of the age of two years, and Lucy his youngest child, of the age of three months ; against the bill of attainder then before the committee. The bill of attainder, he said, had formed the division of the subject into two parts. It asserted the fact of the late Lord Edward's treason ; and, secondly, it purported to attain him, and to vest his property in the crown. He would follow the same order. As to the first bill, he could not but remark upon the strange looseness of the allegation ; the bill stated that he had, during his life, and since the first of November last, committed several acts of high treason, without stating what, or when,

or where, or with whom: it then affected to state the different species of treason of which he had been guilty, viz. conspiring to levy war and endeavouring to persuade the enemies of the king to invade the country. The latter allegation was not attempted to be proved! the conspiring to levy, without actually levying war, was clearly no high treason, and had been repeatedly so determined. Upon this previous and important question, namely, the guilt of Lord Edward, (and without the full proof of which no punishment can be just,) he had been asked by the committee, if he had any defence to go into? he was confounded by a question which he could not answer; but upon a very little reflection he saw in that very confusion the most conclusive proof of the injustice of the bill. For what, he said, can be more flagrantly unjust, than to inquire into a fact, of the truth or falsehood of which no human being can have knowledge, save the informer who comes forward to assert it. Sir, said he, I now answer the question: I have no defensive evidence! I have no case! It is impossible I should—I have often of late gone to the dungeon of the captive; but never have I gone to the grave of the dead man to receive instructions for his defence—nor in truth have I ever before been at the trial of a dead man! I offer, therefore, no evidence upon this inquiry; against the *perilous example* of which, I do protest on behalf of the *public*, and against the *cruelty* and *injustice* of which I do protest in the name of the *dead father*, whose *memory* is sought to be *dishonoured*, and of his *infant orphans*, whose bread is sought to be taken away. Some observations, and but a few, upon the assertions of Reynolds, I will make. [Mr. Curran then observed upon the credit of Reynolds by his own confession.] I do verily believe him in that instance, even though I have heard him assert it upon his oath, by his own confession, an informer, and a bribed informer. A man whom seven respectable witnesses had sworn in a court of justice upon their oaths, not to be credible on his oath—a man upon whose single testimony no jury ever did, nor ever ought, to

pronounce a verdict of guilty. A kind of man to whom the law resorts with *abhorrence* and from necessity, in order to set the criminal against the crime, but who is made use of by the law upon the same reason that the *most noxious poisons* are resorted to in medicine. If such the man, look for a moment at his story; he confines himself to mere conversation only with a dead man. He ventures not to introduce any third person, living, or even dead! he ventures to state no act whatever done; he wishes indeed to asperse the conduct of Lady Edward Fitzgerald, but he well knew, that even were she in the country, she could not be adduced as a witness to disprove him.

See, therefore, if there be any one assertion to which credit can be given, except this, that he has sworn, and forsworn, that he is a traitor, that he has received five hundred guineas to be an informer, and that his general reputation is to be utterly *unworthy* of credit.

As to the papers, it was sufficient to say that no one of them, nor even all of them, were ever asserted to contain any positive proof against Lord Edward; that the utmost that could be deduced from them was nothing more than doubt or conjecture, which, had Lord Edward been living, might have been easily explained, to explain which was now impossible; and upon which to found a sentence of guilt, would be contrary to every rule of justice or humanity.

He would therefore pass to the second question. Was this bill of attainder warranted by the principles of reason? the principles of forfeiture in the law of treason? or the usage of parliament in bills of attainder? The subject was of necessity very long; it had nothing to attract attention, but much to repel it. But he trusted that the anxiety of the committee for justice, notwithstanding any dulness either in the subject or in the speaker, would secure to him their attention. Mr. Curran then went into a minute detail of the principles of the law of forfeiture for high treason. The laws of the Per,

sians and Macedonians extended the punishment of the traitor to the extinction of all his kindred. That law subjected the property and life of every man to the most complicated despotism, because the loyalty of every individual of his kindred was a matter of wild caprice as the will of the most arbitrary despot could be.

This principle was never adopted in any period of our law. At the earliest times of the Saxons, the law of treason acted directly only on the person of the criminal; it took away from him what he actually had to forfeit; his life and property. But as to his children, the law disclaimed to affect them directly; they suffered; but they suffered by a necessary consequence of their father's punishment, which the law could not prevent, and never directly intended. It took away the inheritance, because the criminal, at the time of taking it away, had absolute dominion over it, and might himself have conveyed it away from his family. This, he said, was proved by the instances of conditional fees, at the common law, and estates-tail since the statute *de donis*. In the former case, the tenant did not forfeit until he had acquired an absolute dominion over the estate by the performance of the condition. Neither in the latter case was the estate-tail made forfeitable until the tenant in tail had become enabled in two ways to obtain the absolute dominion—by a common recovery, or by a fine. Until then the issue in tail, though not only the children of the tenant, but taking from him his estate by descent, could not be disinherited by his crime. A decisive proof, that even the early law of treason never intended to extend the punishment of the traitor to his children as such, but even this direct punishment upon the traitor himself was to take effect, only upon a condition suggested by the unalterable rules of natural justice, namely, a judgment founded upon conviction, against which he might have made his defence, or upon an outlawry, where he refused to abide his trial. In that case he was punished, because during his life

the fact was triable; because during his life the punishment could act directly upon his person; because during his life the estate was his to convey, and therefore his to forfeit.

But if he died without attainder, a fair trial was impossible; because a fair defence was impossible; a direct punishment upon his person was impossible, because he could not feel it, and a confiscation of his estate was equally impossible, because it was no longer his, but was then vested in his heir, to whom it belonged by a title as good as that by which it had ever belonged to him in his life-time, namely, the known law of the country.

As to a posthumous forfeiture of lands, that appears to have been attempted by inquest after death. But so early as the eighth of Edward III. the legality of such presentments were disallowed by the judges. And there is no lawyer at this day who can venture to deny that since the twenty-fifth and thirty-fourth of Edward III. no estate of inheritance can regularly be forfeited save by attainder in the life of the party; therefore the law of the country being, that unless the descent was intercepted by an actual attainder in the life-time of the criminal, it became vested in the heir. The moment it did descend, the heir became seised by a title the most favoured in law. He might perhaps have been considered as a purchaser for the most valuable consideration, his mother's marriage, of which he was the issue. Why therefore was posthumous attainder excluded from the protective law of treason? Why has it never since been enacted by a prospective law? Clearly for this reason! that in its own nature it is inhuman, impolitic, and unjust.

But it is said this may be done by a bill of attainder; that the parliament is omnipotent, and therefore may do it; and that it is a proceeding familiar to our constitution. As to the first, it could not be denied that the parliament was in the power of the country, but an argument from the existence of a power to the exercise of it in any particular in-

stance, is ridiculous and absurd. From such an argument it would follow, that it must do whatever it is able to do; and that it must be stripped of the best of all power: the power of abstaining from what is wrong.

Mr. Curran then endeavoured to show that such a bill ought not to pass. First, because every argument against the justice or the policy of a prospective, was tenfold strong against a retrospective law. Because every *ex post facto* law was, in itself, an exercise of despotical power; that when it altered the law of property it was peculiarly dangerous; that when it punished the innocent for the guilty it was peculiarly unjust; that when it affected to do that which the criminal law as it then stood could not do, it acted peculiarly against the spirit of the constitution, which was to contract and restrain penal law by the strictest construction, and not to add to it by vindictive innovation. But, he said, he was warranted to go much further upon the authority of the British legislature itself, and to say that the principle of forfeiture, even in the prospective law, was altogether repugnant to the spirit of the British constitution.

The statutes of Anne, and of George the second, have declared that after the death of the pretender and of his sons, no such forfeiture ought nor should exist. In favour of that high authority, every philosophical and theoretic writer, Baron Montesquieu, the Marquis Beccaria, and many others, might be cited. Against it, no one writer of credit or character that had come to his hands. Of the late Mr. Yorke he did not mean to speak with disrespect; he was certainly a man of learning and genius, but it must be observed, he wrote for a party, and for a purpose; he wrote against the repeal of the law of forfeiture more than for its principle; of that principle he expressly declines entering into a direct defence. But for the extending that principle farther than it is already law, the slightest insinuation cannot be found in his treatise.

But, said Mr. Curran, it is asserted to be the usage of the

constitution in both countries. Of bills of attainder, he said, the instances were certainly many, and most numerous in the worst times, and rising above each other in violence and injustice. The most tolerable of them was, that which attainted the man who fled from justice, which gave him a day to appear, had he chosen to do so, and operated as a legislative outlawry. That kind of act had been passed, though but rarely, within the present century. There have been many acts of attainder when the party was willing, but not permitted, to appear and take his trial. In these two kinds of bills of attainder, however, it is to be observed, that they do not any violence to the common law, by the declaring of a new crime or a new punishment, but only by creating a new jurisdiction and a new order of proceeding. Of the second kind that has been mentioned, many instances are to be found in the violent reigns of the Plantagenets and the Tudors, and many of them revised by the wisdom of cooler and juster times. Of such unhappy monuments of human frailty, Lord Coke said, "*auferat oblivio si non silentium tegat.*"

I beg leave, said Mr. Curran, to differ in that from the learned judge: I say, let the record upon which they are written, be indelible and immortal. I say, let the memory that preserves them have a thousand tongues to tell them, and when justice, even late and slow, shall have robbed their fellow principle of life, let them be interred in a monument of negative instruction to posterity for ever.

A third kind of bill of attainder might be found, which for the first time declared the law, and attainted the criminal upon it: such was the attainder of Strafford. A fourth which did not change the law as to the crime, but as to the evidence upon which it was to be proved: such was the attainder of Sir John Fenwick. Of these two last species of attainder no lawyer has ever spoken with respect; they were the cruel effect of the rancour and injustice of party spirit; nor could any thing be said in their excuse except that they were made for the direct punishment of the actual criminals, and whilst

they were yet living. The only other attainder that remained possible to be added to this catalogue was that of a bill like the present, which affects to try after the party's death, when trial is impossible; to punish guilt when punishment was impossible; to inflict punishment where crime is not even pretended.

To change the settled law of property, to confiscate the widow's pittance! to plunder the orphans' cradle! and to violate the religion of the dead man's grave! For this, too, there was a precedent, but for the honour of humanity let it be remembered that a *hundred and forty years* had elapsed in which that precedent had not been thought worthy of imitation in Great Britain: he meant, he said, the attainder of the regicides. Upon the restoration, four of them were included in that bill of attainder, which was passed after their deaths.

Mr. CURRAN then adverted pretty much at large upon the circumstances of that period. A king restored, and by his nature disposed to mercy; a ministry of uncommon wisdom, seeing that the salvation of the state could be secured only by mildness and conciliation; a bigoted, irritated and interested faction in parliament; the public mind in the highest state of division and agitation. For what, then, is that act of attainder resorted to as a precedent? surely it cannot be as a precedent of that servile paroxysm of simulated loyalty with which the same men, who a few days before had shouted after the wheels of the good protector, now raked into the grave of the traitorous usurper, and dragged his wretched carcass through the streets: that servile and simulated loyalty, which affected to bow in obsequious admiration of the salutary lenity which their vindictive folly was labouring to frustrate: that servile and interested hypocrisy which gave a hollow and faithless support to the power of the monarch, utterly regardless alike of his character or his safety.

That the example which this act of attainder held forth was never respected, appears from this, that it never has been

followed in Great Britain, although that country has since that time been agitated by one revolution, and vexed by two rebellions!

So far from extending forfeiture or attainder beyond the existing law, the opinion of that wise and reflecting country was gradually maturing into a dislike of the principle altogether: until at last, by the statutes of Anne, and of George the second, she declares that no forfeiture or attainder for treason should prejudice any other than the actual offender, nor work any injury to the heir or other person, after the death of the pretender to the throne. Why, said Mr. Curran, has Great Britain thus condemned the principle of forfeiture? Because she felt it to be unjust, and because she found it to be ineffectual.

Here Mr. Curran went into many reasons to prove the impolicy of severe penal laws. They have ever been found, he said, more to exasperate than to restrain: where the infliction is beyond the crime, the horror of the guilt is lost in the horror of the punishment; the sufferer becomes an object of commiseration, and the injustice of the state of public odium. It was well observed that in England the highwayman never murdered, because there the offender was not condemned to torture! but in France, where the offender was broken on the wheel, the traveller seldom or never escaped! What then is it in England that sends the traveller home with life, but the comparative mildness of English law; what but the merciless cruelty of the French law that gives the atrocious aggravation of murder to robbery? The multiplication of penal laws lessens the value of life, and when you lessen the value of life, you lessen the fear of death.

Look to the history of England upon this subject with respect to treason, notwithstanding all its formidable array of death; of Saxon forfeiture; and of feudal corruption of blood. In what country do you read of more treasons or of more rebellions? and why? Because these terrors do not restrain

the traitor. Beyond all other delinquents he is likely to be a person of that ardent, enthusiastic and intrepid spirit, that is roused into more decisive and desperate daring by the prospect of peril.

Mr. Yorke thinks the child of the traitor may be reclaimed to his loyalty, by the restitution of his estate. Mr. Yorke, perhaps, might have reasoned better if he had looked to the still greater likelihood of making him a deadly enemy to the state, by the deadly ignominy inflicted on his father, and by the loss of his own inheritance.

How keenly did Hannibal pursue his vengeance which he had sworn against Rome? how much more enthusiastically would he have pursued his purpose, had that oath been taken upon a father's grave? For the avenging of a father's sufferings! For the avenging of what he would have called a father's wrongs!

If I am called upon, said he, to give more reasons, why this precedent has not been for more than a century and a half repeated, I will say that a bill of attainder is the result of an unnatural union of the legislative and judicial functions; in which the judicial has no law to restrain it; in which the legislative has no rule to guide it, unless the passion and prejudice which reject all rule and law can be called rules and laws; which puts the lives and properties of men completely at the mercy of an arbitrary and despotic power.

Such were the acts of posthumous attainder in Ireland, in the reign of the arbitrary Elizabeth, who used these acts as a mere mode of robbing an Irish subject for the benefit of an English minion. Such was the act of the ninth of William III. not passed for the same odious and despicable purpose, but for a purpose equally arbitrary and unjust, the purpose of transferring the property of the country from persons professing one religion into the hands of those professing another, a purpose manifested and avowed by the remarkable clause in that act, which saves the inheritance to the heir of the traitor, provided that heir be a protestant! nor so brutally ty-

ranfical in its operation, inasmuch as it gave a right to traverse, and a trial by jury, to every person claiming a right, and protected the rights of infants, until they should be of an age, and capable to assert those rights.

There were yet, Mr. Curran said, other reasons why that precedent of the regicides was not followed in Great Britain. A government that means well will appeal to the affection, not to the fears, of the people. A state must be driven to the last gasp when it is driven to seek protection in the abandonment of the law, in that melancholy avowal of its weakness and its fear.

Therefore it was not done in the rebellion of 1715, nor in that of 1745. He had hitherto, he said, abstained from adverting to the late transactions of Ireland; but he could not defraud his clients or their cause of so pregnant an example. In this country penal laws had been tried beyond any example of any former times; what was the event? The race between penalty and crime was continued, each growing fiercer in the conflict, until the penalty could go no further, and the fugitive turned upon the breathless pursuer.

From what a scene of wretchedness and horror have we escaped? But, said he, I do not wish to annoy you by the *stench of those unburied and unrotted examples of the havoc and the impotence of penal law* pushed to its extravagance. I am more pleased to turn your attention to the happy consequences of temperate conciliatory government, and of equal law. Compare the latter with the former, and let your wisdom decide between the tempest and the calm!

I know it is a delicate subject, but let me presume to suggest what must be the impression upon this grieved and anxious country, if the rigour of the parliament shall seem at war with the mildness of the government; if the people shall have no refuge, except in the mercy of the crown, from the rigour of their own representatives.

But if at the same moment they shall see the convicted and the attainted secured in their lives and their property by the wise lenity of the crown: while the parliament is visiting shame, and misery, and want, upon the *cradle of the unprotected infant*, who could not have offended—But I will not follow the idea; I will not see the inauspicious omen; I pray that heaven may avert it.

One topic more, said he, you will permit me to add: every act of the sort ought to have a practical morality flowing from its principles. If loyalty and justice require that these infants should be deprived of bread, must it not be a violation of that principle to give them food or shelter? must not every loyal and just man wish to see them, in the words of the famous golden bull, “always poor and necessitous, and for ever accompanied by the infamy of their father, languishing in continued indigence, and finding their punishment in living, and their relief in dying.”

If the widowed mother should carry the orphan heir of her unfortunate husband to the gate of any man, who might feel himself touched with the sad vicissitudes of human affairs; who might feel a compassionate reverence for the noble blood that flowed in his veins; *nobler than the royalty that first ennobled it*; that like a rich stream rose till it ran and hid its fountain: If, remembering the many noble qualities of his unfortunate father, his heart melted over the calamities of the child, if his heart swelled, if his eyes overflowed, if his too precipitate hand was stretched out by his pity, or his gratitude, to the poor excommunicated sufferers, how could he justify the *rebel tear*, or the *traitorous humanity*?

I shall trespass no longer upon the patience for which I am grateful: one word only, and I have done. And that is, once more earnestly and solemnly to conjure you to reflect that the fact, I mean the fact of guilt or innocence, (which must be the foundation of this bill,) is not now, after the death of

the party, capable of being tried, consistently with the liberty of a free people, or the unalterable rules of eternal justice.

And that as to the forfeiture and the ignominy which it enacts : that only can be punishment which lights upon guilt, and that can be only *vengeance* which *breaks* upon *innocence*!!!

THE END.

